No. 352

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**BRIEF FOR APPELLANT AND JOINT APPENDIX**

IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

## No. 13,728

LISE HAAS, *Appellant*

v.

ROBERT B. ANDERSON
~~GEORGE M. HUMPHREY~~, WHITNEY H. GILLILLAND, PEARL CARTER PACE, AND HENRY J. CLAY, *Appellees*

**Appeal From an Order of the United States District Court for the District of Columbia**

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*Attorneys for Appellant*

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# JOINT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

Civil Action No. 4731-'55

LISE HAAS, 2328 Rose Street, Berkeley, California, *Plaintiff*

v.

GEORGE M. HUMPHREY, Secretary of the Treasury, Washington, D. C., and WHITNEY H. GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, Washington, D. C., *Defendants*

**Complaint for Injunction and for Declaratory Relief**

[Filed October 25, 1955]

PARTIES AND JURISDICTION

1. This is an action involving more than $3000 exclusive of interest and costs. This Court has jurisdiction under the provisions of D. C. Code 11-306, 5 U.S.C. 1009, 28 U.S.C. 1331, and 28 U.S.C. 2201.

2. Plaintiff is a citizen of the United States residing in Berkeley, California, and has been a citizen since 1952.

3. Defendant Humphrey is the Secretary of the Treasury of the United States and is sued in that capacity. Defendants Gillilland, Pace and Clay are the members of the Foreign Claims Settlement Commission of the United States, an independent government agency established pursuant to Reorganization Plan Number 1 of 1954 adopted under the Reorganization Act of 1949, as amended (5 U.S.C. 133z et seq.), and are sued in that capacity.

NATURE OF THE ACTION

4. This action involves the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621 et seq.), and the Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, 62 Stat. 2658, effective July 19, 1948, known as the Yugoslav Claims Agreement of 1948. Under that Agreement, Yugoslavia paid the United States the sum of $17,000,000 in full settlement of certain claims of the United States against Yugoslavia and in full settlement of all claims of United States nationals against Yugoslavia on account of the nationalization and other taking of their property, and rights and interests of property, in Yugoslavia since 1939. Claims not included within the Agreement are, by Article 3 thereof, "subject to compensation by the Government of Yugoslavia". A copy of that Agreement is attached as Exhibit 1. The International Claims Settlement Act of 1949 was enacted to implement that Agreement and to provide for the creation of an agency to adjudicate claims included within that Agreement. Originally the adjudicating agency was the International Claims Commission established within the Department of State, but in 1954 its functions were transferred to the Foreign Claims Settlement Commission involved in this action. Under the procedure prescribed by the Act, awards made by the Commission are certified to the Secretary of the Treasury who then makes payments, pursuant to the awards, solely out of the $17,000,000 paid by Yugoslavia, which was established as a separate claims fund in the Treasury of the United States known as the Yugoslav Claims Fund.

5. Under the Agreement, claims in general are compensable which are based upon property (a) directly or indirectly owned by an individual who at the time of nationalization was a national of the United States, or (b) directly or indirectly owned by a "juridical person organized under

the laws of the United States." Under the Act, provision is made that the Commission shall apply the following criteria: (a) the provisions of the Agreement; (b) the applicable principles of international law, justice, and equity.

BASIS OF THE CLAIM INVOLVED

6. The claim involved in this action arises from the confiscation by the Yugoslav Government, in 1945, of the properties of the National Cotton Spinning and Manufacturing Company, Ltd., a Yugoslav corporation known as "Dugaresa". At the time of that confiscation, one-third of the shares of Dugaresa were owned by a Swiss corporation known as Etexco A. G., the shares of which were held by one Edwin A. Binder on behalf of plaintiff and three other persons. Those shares had been transferred to Binder in 1940 under duress of the Nazi "Aryan" laws believed to be imminently applicable in Yugoslavia. At that time in 1940, the Etexco A. G. shares were owned in equal amounts by plaintiff and the three other persons, all "non-Aryans", through an American corporation named European Textile Corporation. In order to avoid confiscation under the Nazi decrees, which contained a conclusive presumption that any stock held in a chain of more than one corporation was owned by "non-Aryans", European Textile Corporation distributed the stock of Etexco A. G. to plaintiff and her three co-owners, and those four persons caused their shares of Etexco A. G. to be transferred in August of 1940 to Edwin A. Binder, who was an "Aryan" and an American citizen.

7. The shares of Etexco A. G. were transferred to Binder, and were held in his name, pursuant to an agreement that he was to hold the shares and exercise all powers as a shareholder for the equal benefit of the four transferors. That agreement remained in effect from 1940 to 1950, when Etexco A. G. was dissolved.

8. The property of Dugaresa was confiscated by the Yugoslav Government on November 20, 1945. At that time Binder and three of the transferors were all citizens of the United States, but the fourth transferor, plaintiff Haas, was not. An affidavit was duly filed with the United States Department of State on May 31, 1946 setting forth the interest and the citizenship status of Binder, plaintiff Haas, and the other three transferors. A copy of that affidavit is attached as Exhibit 2. A formal claim for compensation was filed with the Department of State on March 24, 1947, and was subsequently supplemented on November 28, 1947 and March 17, 1948. A copy of Supplemental Information No. 2, filed March 17, 1948, which again sets forth in detail the ownership of the various interests and the non-citizenship of plaintiff Haas, is attached as Exhibit 3.

9. At the time of the negotiation of the Yugoslav Claims Agreement of 1948, the facts stated above with regard to Dugaresa, Binder and the four transferors, including the non-citizenship of plaintiff Haas in 1945, were fully known to the Department of State and to the negotiators. The negotiators intended in the Agreement to provide for full settlement of, and full compensation for, the entire Dugaresa claim of Binder and the four transferors, which was to be considered a United States claim in its entirety. The interest of plaintiff was intended, in the Agreement and in separate documents constituting side agreements to the Agreement, to be a compensable claim.

10. Contemporaneously with the signing of the Agreement, the United States gave Yugoslavia a release of claims which were specifically considered by the negotiators and were deemed settled and discharged by the Agreement. Specifically enumerated as one of those claims was the claim of Binder, including in full the interest of plaintiff. A copy of that release is attached as Exhibit 4.

11. At the time of the consideration by the Congress of the bill which became the International Claims Settlement

Act of 1949, the United States Department of State advised the Congress of the facts stated in paragraphs 9 and 10 above. The Department of State advised counsel for plaintiff, who had submitted a proposed amendment to the bill to make clear that the interest of plaintiff in Dugaresa was to be compensable, that the amendment was unnecessary in the light of the history of the negotiation of the Agreement as evidenced by memorandum. Relying upon this representation of the Department of State, plaintiff refrained from pressing her proposed amendment and so informed the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs. Copies of the correspondence and memorandum referred to above are attached as Exhibits 5, 6, 6a, 7 and 8 to this complaint.

DECISION OF THE COMMISSION

12. After passage of the Act, a claim with the appropriate Commission in the amount of $4,012,500 was duly filed by Binder and the four transferors, jointly and severally, for the confiscation of their interests in Dugaresa. A hearing was held by the Foreign Claims Settlement Commission. On December 30, 1954, the Commission issued its decision which held that the confiscation of the property of Dugaresa was compensable under the Yugoslav Claims Agreement in 1948 and that the four transferors were equal owners of the shares of Etexco A. G. and thus of interests in Dugaresa. The Commission made an award to each of the transferors except plaintiff in the amount of $228,396.46 ($196,875 principal amount plus interest of $31,521.46) each, but the Commission made no award to plaintiff and instead denied her claim in its entirety. The Commission made no award to Binder, on the ground that he was not properly a claimant in his own right and had no status other than the underlying status of the four transferors.

13. The Commission denied the claim of plaintiff, and of Binder so far as it related to the interest of plaintiff, solely on the ground that plaintiff was not a national of the United

States at the time of the confiscation of the assets of Dugaresa. In all other respects the claim of plaintiff was identical with the claim of each of the other three transferors, which the Commission held compensable under the Agreement and allowable in the amount of $196,875 plus interest of $36,521.46. A copy of the Proposed Decision of the Commission, which was adopted as part of its Final Decision, is attached as Exhibit 9, and a copy of the Final Decision of the Commission is attached as Exhibit 10.

14. After issuance of the Commission's Proposed Decision, which denied plaintiff's claim solely on the ground of her non-citizenship at the time of confiscation of the assets of Dugaresa, the Department of State sent a letter to the Commission requesting that the Commission give appropriate consideration to statements of three different State Department representatives. A copy of that letter is attached as Exhibit 11. The statements referred to in the letter were interpretations of the Agreement as making the Binder-Haas claim eligible for compensation despite the non-citizenship of Haas at the time of confiscation. The Commission, however, in its Final Decision, adhered to the position taken in its Proposed Decision.

ERRORS COMPLAINED OF

15. The decision of the Commission is erroneous and in conflict with applicable law because:

(a) It is contrary to the Agreement, which was intended to include the claim of plaintiff as a specific exception to the general requirement of citizenship on the date of the taking of property.

(b) It is contrary to side agreements to the Agreement specifically providing for the claim of plaintiff to be eligible for compensation.

(c) It is contrary to the Agreement, because the claim of plaintiff through Binder involved here is eligible for compensation under the general provisions of that Agreement.

(d) It is contrary to side agreements to the Agreement specifically intended to make the claim of plaintiff through Binder eligible for compensation.

(e) It is contrary to the Act, which was intended to recognize the Binder-Haas claim as eligible for compensation.

(f). Because of the actions of the United States set forth set forth in paragraph 11 above, defendants are estopped to deny the eligibility of the Binder-Haas claim for compensation.

IRREPARABLE INJURY

16. The Commission has certified its awards to defendant Humphrey for payment, and unless restrained by this Court he will proceed to pay those awards, which must be paid solely out of the Yugoslav Claims Fund. That fund is limited, consisting originally of only $17,000,000, which was less than the total of all awards made by the Commission, and more than half of which has already been paid out. If defendant Humphrey is permitted to pay the remaining awards, the fund will be completely depleted before this action can be determined.

17. Plaintiff is unable to obtain compensation from Yugoslavia for the claim involved here, because the claim was settled and released by the United States and is therefore barred. If plaintiff cannot recover from the Yugoslav Claims Fund, she cannot recover at all.

18. Plaintiff has no adequate remedy at law.

WHEREFORE plaintiff demands that:

1. The decision of the Commission be declared to be contrary to law and null and void, and that plaintiff's claim be declared to be eligible for compensation from the Yugoslav Claims Fund;

2. Plaintiff's claim be certified by the Commission or by this Court to defendant Humphrey for payment in the principal amount of $196,875 plus interest of $31,521.46, the amount determined by the Commission to be the value of an interest in Dugaresa equivalent to the Binder-Haas interest;

3. Pending final determination of this action, defendant Humphrey be restrained from making payments out of the Yugoslav Claims Fund which would reduce that fund to an amount less than $228,396.46;

4. Such other relief be granted as to this Court seems appropriate.

FISCHER, WILLIS & PANZER
1735 De Sales Street, N. W.
Washington 6, D. C.
*Attorneys for Plaintiff.*

By: IRVING R. M. PANZER
Irving R. M. Panzer
IRVING R. M. PANZER
Irving R. M. Panzer

VERIFICATION

I, Irving R. M. Panzer, being duly sworn, state that I am the attorney for the plaintiff in this action, that plaintiff is a non-resident, and that I believe the matters and facts stated in this complaint to be true.

IRVING R. M. PANZER
Irving R. M. Panzer

Signed and sworn to before me, a notary public, the 25th day of October, 1955.

/s/ SHEILA KELLY,
*Notary Public.*

## List of Exhibits to Complaint

1. Yugoslav Claims Agreement.

2. Affidavit of May 31, 1946.

3. Supplemental Information No. 2, filed March 17, 1948.

4. Letter-release of claims discharged by Yugoslav Claims Agreement.

5. Letter of April 7, 1949 from Bernard E. Singer to Department of State.

6. Letter of April 13, 1949 from Monroe Karasik to Bernard E. Singer.

6a. File memorandum of April 13, 1949 from C. T. Oliver, attached to Exhibit 6 above.

7. Letter of April 15, 1949 from Monroe Karasik to Mr. Levitan.

8. Letter of April 21, 1949 from Javits, Levitan and Held.

9. Proposed Decision of Foreign Claims Settlement Commission.

10. Final Decision of Foreign Claims Settlement Commission.

11. Letter of December 14, 1954 from Stanley D. Metzger to Foreign Claims Settlement Commission.

* * * * * * * * * * *

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## Exhibit 1

### Agreement Between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and Its Nationals

The Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia, being desirous of effecting an expeditious and equitable settlement of claims of the United States of America

and of its nationals against Yugoslavia, have agreed upon the following articles:

*Article 1*

(a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of $17,000,000 United States currency in full settlement and discharge of all pecuniary claims of the Government of the United States against the Government of Yugoslavia, other than those arising from Lend-Lease and civilian supplies furnished as military relief, arising between September 1, 1939 and the date hereof, and in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof.

(b) Such payment by the Government of Yugoslavia shall be made to the Secretary of State of the United States of America within forty-five days after the signing of this Agreement.

(c) If, upon adjudication made by the agency established or otherwise designated by the Government of the United States to adjudicate claims settled under this Agreement, it is found that the sum of $17,000,000 payable by the Government of Yugoslavia under the provisions of the Agreement is in excess of the total sum of the claims determined to be valid, exclusive of any interest on such claims for the period beginning on the date of the payment referred to in paragraph (a) of this Article, plus the costs of adjudication, if any, not borne by the claimants, the Government of the United States shall take the necessary steps to return such excess amount to the Government of Yugoslavia.

*Article 2*

The claims of nationals of the United States to which reference is made in Article 1 of this Agreement include those respecting property, and rights and interests in and with respect to property, which at the time of nationalization or other taking were:

(A) Directly owned by an individual who at such time was a national of the United States.

(B) Directly owned by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly, or indirectly through interests in one or more juridical persons of whatever nationality, or otherwise; or

(C) Indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through interests, direct, or indirect in one or more juridical persons not within category (B) above, or otherwise.

*Article 3*

The claims of nationals of the United States to which reference is made in Article I of this Agreement do not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, which claims shall be subject to compensation by the Government of Yugoslavia, either by direct negotiations between that Government and the respective claimants or under compensation procedures prescribed by the Yugoslav law.

*Article 4*

(a) Nothing herein contained shall constitute or be construed to constitute a waiver or release by the Government of Yugoslavia of any claims it or any Yugoslav national may have against any national of the United States.

(b) Claimants against the Government of Yugoslavia for compensation on account of the nationalization or other taking of enterprises, whose claims with respect to such nationalization or other taking are claims which are fully settled and discharged by this Agreement, receiving payment out of the funds to be paid by the Government of Yugoslavia under Article 1 of this Agreement shall be deemed to have undertaken to hold the Government of Yugoslavia, and the respective successor enterprises established by such Government, harmless against, and to have assumed, all debt obligations, including guarantees, of the enterprises of which such claimants were formerly the owners, to nationals of countries other than Yugoslavia, valid and subsisting as of the date hereof, incurred not for the benefit of such enterprises, but for the benefit of the owners thereof; but such assumption and undertaking shall be applicable only to such proportion of such obligations as such claimants' interests in such enterprises, at the date of the nationalization or other taking thereof, bore to the total ownership interests therein. Debt obligations, including guarantees, owing to nationals of countries other than Yugoslavia, incurred prior to the time such claimants became nationals of the United States, shall be deemed subject to such assumption and undertaking in the absence of proof that such obligations, including guarantees, were incurred for the benefit of such enterprises.

(c) The Government of Yugoslavia recognizes the obligation of the successor enterprises created by it with respect to debts valid under Yugoslav law which were incurred prior to the nationalization or other taking, for the benefit of the enterprises nationalized or otherwise taken,

provided, however, that there shall be deemed fully settled and discharged all debt obligations of enterprises, nationalized or otherwise taken, owing to nationals of the United States whose claims against the Government of Yugoslavia with respect to the nationalization or other taking of such enterprises are claims which are fully settled and discharged by this agreement; and further that all debt obligations of such enterprises to juridical persons through which the claims of such claimants are derived shall be deemed settled and discharged in the same proportion as such claimants' interests in such enterprises, at the date of the nationalization or other taking thereof, bore to the total ownership interests therein.

*Article 5*

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.

*Article 6*

The Government of Yugoslavia agrees not to employ or to permit the employment of trademarks, company names and trade names formely used in Yugoslavia by enterprises, now nationalized, which were, at the time of such nationalization substantially owned, directly or indirectly, by nationals of the United States to the extent that such trademarks, company names and trade names are counterparts of trademarks, company names and trade names used elsewhere than in Yugoslavia by the former American owners

of such enterprises, directly or through subsidiaries, or by their authority; provided, however, that nothing herein contained shall prejudice the right of the Government of Yugoslavia, or any national thereof, to employ such trademarks, company names and trade names with the consent of the former owners of such enterprises, or others authorized to permit the use thereof. The Government of Yugoslavia will take such measures as may be necessary and appropriate to prevent the use of such trademarks, company names and trade names within Yugoslavia, except with such consent or in connection with products imported into Yugoslavia with respect to which the use of such trademarks, company names and trade names is permitted by or on behalf of the former owners of such enterprises, or others authorized to permit the use thereof. This Agreement does not affect in any way the rights, if any, of nationals of the United States with respect to trademarks, trade names and company names which were used in Yugoslavia by enterprises which have been taken other than by nationalization.

*Article 7*

Claims of nationals of the United States for war damage to property which has not been nationalized or otherwise taken prior to the date hereof shall be treated not less favorably than those of nationals of Yugoslavia, but in no event less favorably than those of the nationals of any other country.

*Article 8*

The funds payable to the Government of the United States under Article 1 of this Agreement shall be distributed to the Government of the United States and among the several claimants, respectively, in accordance with such methods of distribution as may be adopted by the Government of the United States. Any determinations with respect to the validity or amounts of individual claims which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding.

*Article 9*

(a) In the interests of an equitable distribution by the Government of the United States among the several claimants for participation in the amount to be paid by the Government of Yugoslavia in full settlement and discharge of claims in accordance with this Agreement, the Government of Yugoslavia will, upon the request of the Government of the United States, and to the extent possible, bearing in mind the wide-spread destruction of property and books and records in Yugoslavia caused by the war, furnish such information, including certified copies of books, records or other documents, as may be necessary or appropriate to support or refute, in whole or in part, any claim for participation in such amount, and to the same end will permit, in a manner consistent with Yugoslav law, the taking of depositions of such witnesses as may be requested by the Government of the United States.

(b) In the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement, the Government of the United States will supply to the Government of Yugoslavia, certified copies of such formal submissions as may be made by claimants to such agency as may be established or otherwise designated by the Government of the United States to adjudicate claims to participation in the funds to be paid by the Government of Yugoslavia pursuant to this Agreement and of the corresponding awards of such agency with respect thereto. A certified copy of each such submission and award will be supplied to the Government of Yugoslavia within a reasonable time after its receipt or announcement. Subject to such rules and regulations as may be established with respect to proceedings of such agency, the Government of the United States further agrees to make available to the Government of Yugoslavia, upon its request, certified copies of transcripts of any proceedings before such agency and certified copies of documents submitted to such

agency in support or in refutation, in whole or in part, of any claim submitted thereto. Subject to such rules and regulations, and with the consent of such agency, the Government of Yugoslavia may file briefs as *amicus curiae* with respect to any specific claims.

*Article 10*

(a) The Government of Yugoslavia shall authorize persons residing in Yugoslavia who are legally indebted to any individual, firm, or governmental agency in the United States, to meet such indebtedness on maturity.

(b) To the extent feasible, considering Yugoslav foreign exchange resources and regulations, and when necessary to effectuate the purposes of paragraph (a) of this Article, the Government of Yugoslavia shall permit the use of dollars by, or provide dollars to those Yugoslav residents legally owing dollar obligations arising from commercial transactions involving goods or services.

*Article 11*

The Government of Yugoslavia agrees to give sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small but which, in view of the circumstances, are of substantial importance to the persons requesting the transfers.

*Article 12*

The present Agreement shall come into force and effect upon the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Washington in duplicate this nineteenth day of July, 1948.

For the Government of the United States of America:

G C MARSHALL

*Secretary of State*
*of the United States of America*

For the Government of the Federal People's Republic of Yugoslavia:

OBREN BLAGOJEVIC.

*Deputy Minister of Finance*
*of the Federal People's Republic of Yugoslavia*

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**Exhibit 2**

**Filed May 31, 1946**
**(so marked on original)**

STATE OF NEW YORK,
*County of New York, ss:*

Robert Anninger, Victor Anninger and Frederick Unger, being duly sworn, each for himself deposes and says:

Robert Anninger and Victor Anninger have large direct and indirect stockholdings in a Yugoslav Corporation, *D. d. Domace Tvernice Predenja I. Tkanja Pamuka, Dugaresa* (hereinafter called "Dugaresa"). Frederick Unger is the husband of Ann Arens Unger and the brother-in-law of Lise Haas, both of whom have large direct and indirect stockholdings in said corporation. The affiants make this affidavit to set forth certain facts concerning said Corporation.

1. *General Facts:*

"Dugaresa" is a stock corporation with its corporate seat and operating plants at Dugaresa, a community in Croatia, Yugoslavia, near Zagreb. The Corporation had

been organized in 1884 under Hungarian law and became a Yugoslav corporation in 1918.

2. *Financial Structure:*

The latest available pre-war balance sheet (December 31, 1939) shows the following capital:

*Capital Stock*

| | dinars |
|---|---|
| 22,500 fully paid bearer shares Par Value 2500 dinars per share..... | 56,250,000 |

*Surplus and Surplus Reserves*

| | | |
|---|---|---|
| Reserve funds ..... | 5,535,501.90 | |
| Reserve for losses due to changes in currency value.. | 7,215,000... | |
| Undivided profit and profit of the business year 1939..... | 11,134,794.34 | |
| Total Surplus and Surplus Reserve. | | 23,885,296.24 |
| Total Book Capital ..... | | 80,135,296.24 |

The total pre-war book capital of 80,135,296,24 dinars was equivalent to $1,843,111.80 at the pre-war rate of exchange of $2.30 per 100 dinars. As will be shown later, the actual capital was approximately $3,740,000 at December 31, 1939. The actual capital at December 31, 1943 (the latest available balance sheet) was in excess of $4,000,000.

A copy of the balance sheet at December 31, 1939, is attached as Exhibit "A" and made part hereof.

3. *Nature of Business and Industrial Equipment*

"Dugaresa" owns and operates the oldest, largest and finest textile plant in Yugoslavia. In the years preceding the German Invasion of the country, it had a staff of between 3,000 and 4,000 employees and workers. Besides its plants and real estate at Dugaresa, the Corpo-

ration owns an office and store building at Belgrade and a spinning mill at Mladenovac, near Nis, Serbia. This spinning mill, however, was still under construction at the time of the German invasion in 1941 and is still unfinished and only partly equipped with machinery. The plants at Dugaresa comprise a cotton spinning mill with about 40,000 fine spindles, several thousand doubling spindles, a waste spinning plant, (two waste card combinations, three mules and one waste spinning frame), a weaving mill with about 1,300 looms, yarn and cloth dyeing, bleaching and mercerizing plants, etc.; an electric power station, receiving its power from three water turbines and two modern steam turbines totaling about 5,000 HP.

The entire plant had been completely overhauled in the years from 1926 through 1937, and a great part of the machinery and equipment, both in the spinning and weaving mills as well as in the finishing plants, are of recent make (bought in the '30s). Over 400 looms are automats, mostly Swiss (Rueti) make, at that time considered the last word in loom building.

The Company had two wholly owned subsidiary corporations, viz.: the "Mira" d.d., operating a knitting plant in Dugaresa (about 110 machines, producing stockings), and the "Jorgana" d.d., a blanket manufacturing plant at Karlevac, five miles away from Dugaresa.

Aside from the production plants, the Dugaresa Company owned the greater part of the town of Dugaresa, owning large areas of real estate, several large apartment houses, a great number of one and two family houses, etc., so that most of the employees and workers are housed in Company owned buildings. The Company also had its own flour mill, bakery, butcher store, department store, etc., all on a non-profit basis, for the benefit of its employees and workers.

4. *Value of the Property.*

The book value of "Dugaresa" at December 31, 1939 of $1,602,705.92 was far below the true value of the Corporation on that date; nor does it account for increases which occurred subsequent to that date but before the liberation of Yugoslavia. In order to arrive at the true value at December 31, 1939, a substantial portion of the reserves for depreciation carried against fixed assets on the books of the Corporation must be eliminated and treated as part of the capital. The cost of fixed assets as at December 31, 1939, per Exhibit "A," was as follows:

| | dinars |
|---|---|
| Land and buildings ..... | 48,969,394.77 |
| Machinery and equipment ..... | 91,419,541.92 |
| Total fixed assets ..... | 140,388,936.69 |

On the other hand there was a "reserve account for depreciation" in which 112,484,481.27 dinars had been accumulated so that the "net" book value of the fixed assets at December 31, 1939, was shown on the balance sheet at only 27,904,455.62 dinars or $641,802. at the pre-war rate of exchange of 2.30 dollars for 100 dinars. How much out of keeping with the actual value of the Corporation's fixed assets the foregoing figure was can be judged from the fact that expenditures for buildings and machinery in the last four years preceding December 31, 1939 (1936-39) amounted to more than 53,000,000 dinars or almost double the "net" book value shown for the entire plant on December 31, 1939. Moreover, the Yugoslav currency had depreciated over the years which fact further obscures and depreciates on the balance sheet the actual value of fixed assets required while the dinar was stronger.

Furthermore, very heavy purchases of fixed assets over the years had been charged off as expenses and never appeared in the asset accounts.

It was always the Corporation's policy to spare no expense for upkeep of its industrial equipment. Thanks

to that policy, the "Dugaresa" factories were recognized as among the most modern textile plants of the world and foreign experts used to visit the plants to study the achievements in modernization and production techniques made by "Dugaresa."

Under all these conditions, it is safe to say that the plants were conservatively worth at least four times their carrying value of $641,802. Accordingly, this would increase the capital by at least $1,900,000 ($641,000 X 3). When added to the nominal capital of $1,843,000 at December 31, 1939, the true book value at that date would approximate $3,740,000.

When analyzed from the viewpoint of earnings, it is manifest that a capital value of $3,740,000 is very conservative. The net profits* before write-offs for depreciation (but after deduction of all expenditures and taxes) for the five years ended December 31, 1939, were as follows:

| | |
|---|---|
| 1935 | $315,840 |
| 1936 | 431,430 |
| 1937 | 519,000 |
| 1938 | |
| 1939 | 641,700 |

However, 1939 figures do not reflect increases in capital values occurring between then and the day of liberation. The American shareholders of Dugaresa understand that Swiss owners of property in Yugoslavia will likely be given a chance to visit their property and to survey its technical and financial condition. Etexco A.G. (three-quarters owned by American citizens and referred to hereafter) expects to be included in such action. Until Dugaresa has been visited by representatives of shareholders no reliable figures pertaining to the value of the Dugaresa corporation as per date of liberation can be

* Calculated at $2.30 per 100 dinars.

given. A balance sheet of the corporation as at December 31, 1943, which reached the American shareholders through Etexco A.G. (copy of which is attached as Exhibit B) seems to indicate that between 1939 and 1943, 43 million dinars (and kunas which was the name of the currency after the puppet regime had been established in 1941) were spent on land, buildings and machinery. Most of that amount went into the construction and equipment of the planned spinning mill at Mladenovac (Serbia). Apparently the buildings stand almost completed and the machinery is stored partly at Dugaresa, and partly in Switzerland. This expenditure has been carried out without adverse effect on the liquid assets situation of the corporation inasmuch as the excess of liquid assets over liabilities increased from

Din. 52,230,846.82 in 1939 to
Kunas 87,432,447.00 in 1943.

Even though the actual value of the "kuna" in 1943 must be considered inferior to that of the 1939 dinar, the net value of liquid assets must have increased during the period rather than decreased because the increase of the net value of liquid assets was mainly due to the doubling of the value of the inventory from 74 to 146 million.

Considering these facts, the actual value on dollars of Dugaresa corporation must be assumed to have increased by about $600,000.00 to around $4,340,000 for the entire capital stock, or about $193 per share at the end of 1943.

5. *Ownership.*

The corporation had been founded by the parents (and grandparents) of the present owners. One third of the stock was held by local banks which in the early thirties sold their holdings to Etexco A.G., Zurich, a Swiss corporation belonging to four of the present stockholders of Dugaresa Corp. At present the stock of the corporation is owned as follows:

| | shares |
|---|---|
| 1) Otto Anninger, U.S. citizen, New York (father of Robert and Victor Anninger) | 1300 |
| 2) Robert P. Anninger, U.S. citizen, New York | 1327 |
| 3) Victor Anninger, U.S. citizen, New York | 1327 |
| 4) Ann Arens Unger, U.S. citizen, Berkeley, Cal. | 2274 |
| 5) Erna Schwadron, U.S. citizen, New York | 1702 |

| | shares |
|---|---|
| (Total carried forward) | 7930 |
| 6) George Anninger, U.S. citizen, New York | 810 |
| 7) Ada Werber-Laslo, U.S. citizen, New York | 402 |
| Total number of shares directly held by American citizens | 9142 |
| 8) Francoise de Seemann, Czechoslovak citizen, Rio de Janeiro | 1012 |
| 9) Nelly Stern, Austrian citizen, New York (holding U.S. First Papers) | 75 |
| 10) Richard Aninger, Czechoslovak citizen, Rio de Janeiro | 60 |
| 11) Karoline Barkan, Latvian Russian citizen, London | 800 |
| 12) Dora Fischer, believed Australian subject, Sydney, Australia | 700 |
| 13) Lise Haas, (sister of Ann Arens Unger) believed stateless (Austrian born, naturalized Yugoslav 1939, now without Yugoslav passport), Neuchatel, Switzerland | 3211 |
| Total number of shares held by individuals who are not American citizens | 4858 |
| 14) Etexco A.G., Zurich, a Swiss corporation owned by stockholders 2, 3, 4 and 13 in equal parts, therefore owned by American citizens to the extent of 75 per cent | 7500 |
| Total number of shares | 22500 |

In late 1940 (a few months before the German invasion of Yugoslavia) a census of stockholders of Yugoslav corporations was ordered by the then Yugoslav government. Since this census was supposed to serve as a prepartion for confiscatory measures against "non-Aryan" stockholders, the total stock of all stockholders (except (8) and (14)) was registered with the Yugoslav authorities in the names of nominees so that from records held in Yugoslavia the stock would appear to be owned as follows:

| | shares |
|---|---|
| Etexco A.G., Zurich | 7500 |
| Dr. Fritz Kind, Swiss citizen, Zurich | 937 |
| E. A. Binder, U.S. citizen, New York | 6228 |
| Mary E. Burnside, U.S. citizen, New York | 3102 |
| Manfred Palm, U.S. citizen, New York | 250 |
| Florence Maron, U.S. citizen, New York | 1212 |
| Francoise de Seemann, Rio de Janeiro | 997 |
| Dr. Felix Haas, husband of Lise Haas | 2274 |
| Total | 22500 |

Inasmuch as 75 per cent of the stock of Etexco A.G. is American owned and 9142 shares of Dugaresa are directly owned by U.S. citizens, the Dugaresa Corp. can be assumed as American owned to the extent of 65.7 per cent or 73.9 per cent, depending on whether the total stock owned by Etexco A.G., or only 75 per cent thereof, is considered as American owned property.

6. *Location of Stock Certificates.*

Almost two-thirds of the stock certificates (all bearer shares) are held in New York or Zurich, Switzerland. The stock owned by Etexco A.G., 7500 shares, is on deposit with a Yugoslav (Zagreb) banking institution. 250 additional shares are deposited in Zagreb with another local bank. These 250 shares belong to shareholders (8), (9), (11) and (12).

*7. Management of the Corporation before the Nazi Occupation.*

Up to 1938 all of the individuals owning stock of "Dugaresa" (shareholders (1) to (13)) were living in Central Europe (most of them in Vienna). They were able to, and did, supervise and direct the operation of "Dugaresa." Mr. Otto Anninger and the husband of Lise Haas, Dr. Felix Haas, were members of the board of directors. The other members of the board were business friends of Dugaresa Corporation. Four of them were Yugoslavs and two were Swiss.

In 1938 all of the individual shareholders of Dugaresa Corporation, with the exception of Lise Haas, emigrated from Europe. In consequence thereof they had to give up active influence on the management of "Dugaresa." With the progress of events in Europe they found themselves cut off from direct contacts, and after Pearl Harbor, even from indirect communication. Thus the American shareholders have been unable to and did not exercise any influence whatsoever on the affairs of the corporation after the creation of the Croation puppet state. The stockholder, Mrs. Lise Haas, and her family, had settled down in Dugaresa in 1938 after fleeing from Vienna. They obtained Yugoslav citizenship, and the husband of Mrs. Haas, Dr. Felix Haas, continued to take part in the management of the corporation until the time of the fall of Yugoslavia. Thereafter he was arrested, temporarily released, and in August 1942 arrested again by the enemy. Since the day of his second capture by the Nazis his whereabouts have been unknown, and he must be assumed to have perished as a victim of the Nazi rule in Yugoslavia.

*8. "Dugaresa" Indebtedness Abroad.*

As far as the American shareholders of the Dugaresa Corporation can ascertain, the corporation owns the following amounts in United States Dollars as accounts pay-

able to foreign creditors (balances including interest up to December 31, 1945): —

| | | |
|---|---|---|
| | $75,744.61 | Reinhart & Co., Winterthur, Switzerland, or Reinhart Cotton Corporation, New York, N. Y. |
| | 24,765.08 | Bunge & Co., Ltd., Manchester, England |
| | 9,159.64 | European Textile Corporation, New York, N. Y. |
| About | 7,000.00 | N. V. Katoen Import & Export Mij., Rotterdam, Holland |
| Total | $116,699.33 | |

All of these aforegoing debts resulted from cotton transactions concluded in the years 1938 to 1940 under the guarantee of the stockholders Robert P. Anninger, Victor Anninger, Ann A. Unger and Lise Haas. The unpaid balances accumulated from debit entries for differences of final prices and weights which could be charged only after shipment of the cotton and after payment of the provisional invoices. These balances are known to the Dugaresa Corporation and have not been contested, But payment became impossible owing to the financial condition of Yugoslavia after 1939. The aforementioned stockholders who had pledged their guarantee for the cotton transactions involved paid the amounts due to the first two creditor firms, Reinhart and Bunge, and are credited for their payments on deposit accounts on the books of said firms, repayable after payment from Dugaresa Corporation. Regarding the other two creditors, European Textile Corp. and N. V. Katoen, no payment has been made by the respective shareholders, but the firm of N. V. Katoen has already approached the shareholder Etexco A.G. with the request for payment.

After resumption of postal service, three of the aforementioned creditors (Reinhart, Bunge, European Textile Corp.) sent statements of their accounts to the Dugaresa

Corporation, requesting confirmation of balance and payment, but have not received any reply so far although many months have elapsed since sending those communications.

In addition to the foregoing claims, the shareholders are entitled to the following dividends declared but unpaid:

| Dividend Year | Dividend Declared Per Share |
|---|---|
| 1939 | 375 dinars (or kunas) |
| 1940 | 375 |
| 1941 | 220 |
| 1942 | 225 |
| 1943 | 225 |
| Total Declared But Unpaid Dividends Per Share | 1420 dinars (or kunas) |

9. *Developments During the Nazi Occupation.*

The fall of Yugoslavia in April 1941 brought about revolutionary changes in the management of the Dugaresa corporation. The firm was placed under the control of a board of "kommissars," the general manager of the corporation who had been connected with the firm for many years was immediately dismissed and the majority of the members of the board of directors were forced to resign. Among them were Messrs. Otto Anninger and Dr. Felix Haas. The old trusted representatives were replaced by new members who with one exception were persons unknown to the American shareholders and not selected by them. The American shareholders who since 1938 had no opportunity to visit the factory and to freely communicate with its management feel unable to express any opinion about the activities of the directors and managers of the Nazi period. However, they are of the belief that the directors of the Dugaresa Corporation at that time had little choice of action. The fac-

tory actually was under the rule of the Nazi appointed kommissars, and beginning with the German occupation the output of the factory seems to have shrunk to a fraction of normal. Thus eventually, willingly or not, the factory had to confine its production mainly to processing those small amounts of raw materials which the puppet government would assign for the production of goods ordered by its agencies, and at the time of the liberation the total labor force of the factory was reported to have amounted to one-twentieth of the pre-war complement.

10. *Developments after the "Liberation" of Yugoslavia.*

Early after the Liberation, both Etexco A.G. and the American stockholders of Dugaresa corporation began their attempts to get in touch with the management of the corporation. Direct communications by mail and cable failed to elicit any reply. Therefore, subsequent efforts were made through diplomatic channels. However, neither the assistance of the American Embassy in Belgrade, nor inquiries made through the Yugoslav Embassy in Washington and through the Swiss representation in Belgrade were successful. Thus, whatever American shareholders know about the fate of the corporation comes from indirect private sources or from reports in the Yugoslav press.

Information from private sources indicates that after the Liberation, the Tito government appointed new managers. One of them, one Mr. Nusic, a former employee of the corporation, had been a partisan during the war, and the other, one Mr. Richard Stukart, was the former manager of one of Dugaresa's competitors. Among the first actions of the new management seems to have been the sale to the Tito government of the entire stocks of finished goods—apparently something in the neighborhood of one million meters or at pre-war prices more than 20 million dinars worth of merchandise. These goods reportedly were

sold for about one-sixth of the pre-war price in dinars with the consequence that the corporation's liquid assets were soon exhausted. The factory reportedly gradually increased its labor force to 2000 in September 1945 and to 3000 around the end of the year. Production seems to be maintained mostly with cotton supplied by Russia with a large part of manufactured goods going to Russia. The attached translation of an excerpt from a newspaper report about a visit of the Minister of Industry and Mining, Mladen Ivekovic, at the Dugaresa factory (Exhibit "C") seems to evidence the great importance which the Tito government is attaching to the Dugaresa enterprise.

11. *The Expropriation of Dugaresa Shareholders.*

The fact that the largest and best equipped textile enterprise of the country should be successfully operated by private non-Yugoslav interests obviously aroused the greed of nationalists in the country. When after 1938 Hitlerism made its inroads into the Balkaan countries, non-Aryan ownership of "Dugaresa" promised to offer a pretext for expropriation. The decree issued by the semi-Fascist government of Stoyadinovic (or rather by its local Croatian subsection) by which registration of all stockholders in Yugoslav corporations was ordered, and a few months thereafter the appointment of Nazi kommissars for Dugaresa Corporation by the Croatian puppet government were the first steps in that direction. However due to the precautions taken by the shareholders as explained in Section 4 hereof, the registration failed to disclose non-Aryan stockholders, except for Mrs. Haas, and most of the stock apparently was owned by Swiss and American interests. This seems to have cautioned the rulers of puppet Croatia, and they contented themselves with the confiscation of the 2274 shares of Dugaresa stock admittedly belonging to Mr. Haas. Even that seizure was of little significance because the certificates evidencing those shares were outside the reach of the Croatian government.

Conflicting though their political beliefs may be with those of their Fascist predecessors, in the case of "Dugaresa", the authorities of Tito Yugoslavia maintained the course inaugurated by the Ustachi rulers. Tito's decree ordering confiscation of the property of collaboratores was an easy expedient for confiscation in the case of Dugaresa corporation, the same as in numerous others in which prosperous enterprises were involved. By a notice in the Official Gazette of Federative Croatia under date of November 1[illegible]th, translation of which is annexed as Exhibit "D", five members of the board of directors of Dugaresa corporation were summoned to appear in court on the charge of criminal actions against "state and nation." Two weeks later, on November 29th, the Croatian newspaper "Vjestnik" published a report about the outcome of criminal proceedings against five members of the board of directors of Dugaresa corporation. According to this report, translation of which is annexed as Exhibit "E", four members of the board, among them three of those who had been summoned by the aforementioned notice, received sentences ranging from three years forced labor to the capital penalty. In addition the entire enterprise of Dugaresa was declared confiscated by the State.

Having been cut off from their factory throughout the years of the Nazi regime and thereafter, the American shareholders know little about the background of the case. Therefore, they are reluctant to express themselves on the merits of the decision of the court as far as the indicated persons are concerned. One of the few facts given as justification for the sentence, however, seems grossly misinterpreted; if machinery purchased before the war for the corporation's new spinning mill at Mladenovac, Serbia, was transferred to Dugaresa this could not have been done with the intention of abetting the Axis, but, on the contrary, must have been for the purpose of keeping the machines out of the hands of the Germans who were then ruling Serbia and looting whatever they could lay a hand on. It has already been mentioned that the fact that a gradually in-

creasing portion of the output went to the army and other institutions of puppet Croatia does not permit any conclusions to be drawn therefrom unless the total annual production and the measure of coercion exerted by the then authorities of Croatia are known. Of the sentenced persons those who were nationals of Croatia are unknown to the American shareholders. They, therefore, cannot confirm nor refute the charge of collaboration brought against Ing. Reitter; Dr. Kaic and Dr. Karlovic. The three Swiss gentlemen, however, have been known to the shareholders and have been personal friends of theirs for many years. The American shareholders know them as persons who cannot be suspected of the slightest taint of Nazi sympathies. Statements such as that attributed to the engineer Reitter, the only indicted person who seems to have been given a hearing and who obviously was interested in shifting the blame on his absent colleagues, to the effect that "Dr. Kind was a great supporter of the Germans' 'or that "Dr. Kind came into the country as a member of the fifth column" cannot be accepted as true. If a fair trial had been intended by the court it would have had to give the indicted persons including the Swiss members of the board of directors of the Dugaresa corporation the opportunity to appear in court and present their case. However, just the contrary was done. Five of the members of the board were summoned on short notice by a poster on the courthouse at the small rural city of Karlovac, and the reason was given that addresses of those persons were not known to the court. In surprising contradiction to this statement the sentence revealed that one of those five men, the Yugoslav Dr. Nicola Kaic, was in the hands of Tito's authorities serving a five years sentence. Also regarding the three Swiss members of the board of directors the excuse that their addresses were not known does not hold true. The public prosecutor could have easily obtained them from the management of Dugaresa corporation as well as through other sources since these three gentlemen are prominent people at Zuerich, one of them being the president of the largest Swiss bank

(Swiss Bank Corporation), and the other, Dr. Kind, a manager of a well known Swiss chartered accountants and trustees firm (Societe Fiducaire Suisse with offices at Basle, Zuerich and Geneva). However, justice and fair trial obviously were not aimed at by People's District Court at Karlovac. Apart from vengeance on political enemies such as apparently the one member of the board receiving the capital penalty likely was, the main purpose of the trial seems to have been to build up a retext for expropriation of the shareholders of Dugaresa cororation.

The American shareholders of Dugaresa would be reluctant to draw such conclusion which is a reflection on the legality of actions of a court in a country which throughout the war was our Ally and the leaders of which in their public utterances do not tire of proclaiming their adherence to democratic principles and freedom of private enterprise. However, the case of Dugaresa corporation is no isolated occurrence, and it fits into the general pattern of the present economic policies of the Yugoslav government which already have been reported by many unbiased foreing observers. Under these policies, private property is being systematically exterminated and enterprises are confiscated under the claim of either collaboration or for fraud.

Aggravating the case reported herewith is the fact that according to the newspaper report the court was cognizant of the fact that "all shareholders of the corporation are foreigners." Some other facts having a bearing on the case probably were not known to the court; that all stockholders of Dugaresa corporation are enemies of totalitarianism who had to flee before the Nazis, and have to mourn the loss of relatives including the husbands of the shareholders, Lise Haas and Nelly Stern, who probably perished as victims of Nazi persecution. To punish such persons by confiscating their property under the pretext of collaboration by persons whom they did not know and on the actions of whom they had not the slightest influence, seems a ludicrous travesty on justice.

12. *Summary of American Claims.*

As shown in Item 4 hereof, the value of one share of "Dugaresa" amounted to about $193 before the liberation of Yugoslavia. United States citizens hold 9.142 shares directly representing a total value of $ 34,000; they hold 75% of the stock of Etexco A. G. which, in turn, owns 7,500 shares of Dugaresa representing a value of $1,447,000. Thus the total claim of American stockholders for compensation is $3,211,000 or $2,849,000, depending on whether the total holdings of Etexco A. G. are considered to be American property or only 75% thereof may be so considered.

The figures submitted above are, of course, subject to revisions after the owners ascertain the actual condition of the property and the accounts on the day of liberation.

In addition to their claims as stockholders, Dugaresa owes dollar amounts aggregating $116,699.33 to Robert P. Anninger, Victor Anninger and Ann A. Unger, said amounts having arisen in connection with pre-war cotton purchases by "Dugaresa" as explained in Item 8 hereof.

Finally, the said American stockholders have a claim for declared but unpaid dividends as described in Item 8 hereof. Their aggregate claim on the basis of an exchange rate of $2.30 per 100 dinars (the only rate recognized by Yugoslavia) amounts either to $298,577.72 on $244,950, again depending on the treatment to be accorded to the shares owned by Etexco.

124 **Exhibit 3**

Filed Mar. 17, 1948
(so marked on original)

UNITED STATES GOVERNMENT
DEPARTMENT OF STATE

No. 360 H:115

In the Matter of

OTTO ANNINGER, ROBERT P. ANNINGER, VICTOR K. ANNINGER, ANN A. UNGER, EDWIN A. BINDER, ERNA SVADRON, GEORGE ANINGER AND ADA WERBER-LASLE, STOCKHOLDERS OF D. D. DOMACE TVORNICE PREDENJA I TKANJA PAMUKA, DUGARESA, (NATIONAL COTTON SPINNING AND MANUFACTURING CO., LTD., DUGARESA) invalidly expropriated by the Government of Yugoslavia on or about November 28, 1945

## SUPPLEMENTAL INFORMATION (NO. 2)

Claimants allege:

On November 28, 1947, claimants submitted to the Department of State, financial information showing that the net value of Dugaresa's capital stock was $9,377,487 as of the date of Dugaresa's confiscation by the Yugoslavs. This value is based primarily on the Yugoslav Court Decree confiscating the Company (copy of which was submitted to the Department of State on November 28, 1947). Accordingly, the value per share of the 22,500 outstanding shares of stock was $416.78.

American citizens held, both directly and indirectly, 16,642 shares of Dugaresa's stock at the date of confiscation (November 28, 1945) and if valued on the same basis given above, the American interest totals $6,936,052.76, as shown hereafter:

| Name | Date of Citizenship | No. Shs. Held | Total Value (at $416.78 per sh.) |
|---|---|---|---|
| | Direct Ownership | | |
| Otto Anninger | June 5, 1944 | 1,300 | $ 541,814.00 |
| Robert P. Anninger | May 18, 1944 | 1,327 | 553,067.06 |
| Victor K. Anninger | Mar. 19, 1945 | 1,327 | 553,067.06 |
| Ann A. Unger | Aug. 24, 1944 | 2,274 | 947,757.72 |
| Erna Svadron | Sept. 5, 1944 | 1,702 | 709,359.56 |
| George Aninger | April 4, 1944 | 810 | 337,591.80 |
| Ada Werber-Lasle | Dec. 12, 1944 | 402 | 167,545.56 |
| | Sub-Total | 9,142 | $3,810,202.76 |
| | Indirect Ownership | | |
| Etexco, A. G. (a Swiss Corp.— (see below) | | 7,500 | 3,125,850.00 |
| | Total | 16,642 | $6,936,052.76 |

As heretofore explained to the Department of State, the stock of Etexco A. G. is 75% American owned, viz., by Messrs. Robert P. Anninger, Victor K. Anninger and Mrs. Ann A. Unger. The remaining 25% is owned by Mrs. Lisa Haas, who has resided at Berkeley, California, since her immigration in July 1947. Mrs. Haas holds first papers of United States citizenship, issued January 13, 1948 by the Superior Court of Alameda County, California. Prior to her immigration Mrs. Haas for several years was a stateless resident of Switzerland. Etexco A. G. has been and is considered by Switzerland as an American corporation.

While the remaining 5,858 shares of Dugaresa were not owned by American citizens on the date of confiscation, 3,286 shares of Dugaresa are owned by persons who have since become and are American residents, holding first papers:

| Name | Date of Immigration | Date of First Papers | No. Shs. Held | Total Value (at $416.78 per (sh.) |
|---|---|---|---|---|
| Nellie Stern | Sept. 5, 1945 | Oct. 19, 1945 | 75 | $31,258.50 |
| Lise Haas | July 21, 1947 | Jan. 13, 1948 | 3,211 | 1,338,280.58 |
| | | Totals | 3,286 | $1,369,539.08 |

The total value of Dugaresa shares owned by persons who now are citizens or residents of the United States is, therefore, $8,305,591.84.

MILTON POLLACK,
Office & P. O. Address:
111 Broadway, Manhattan,
New York 6, New York,
United States of America,
*Attorney for Claimants.*

118 **Exhibit 4**

July 19, 1948

His Excellency
Sava N. Kosanovic,
Ambassador of Yugoslavia.

My dear Mr. Ambassador:

Without prejudice to the free exercise of such authority and discretion as may be vested in any agency that may be established or otherwise designated by the Government of the United States to adjudicate claims, the Government of the United States confirms that during the course of the negotiations leading up to the execution of the agreement with the Yugoslav Government regarding pecuniary claims of the United States and its nationals, claims of the following named persons with respect to the property and rights and interests in and with respect to the enterprises hereinafter set forth and to the extent indicated, were considered, and that it is deemed and understood by the Government of the United States that the obligations of the

Government of the Federal People's Republic of Yugoslavia to such persons with respect to such property and any rights and interests in and with respect to such enterprises, direct or indirect through interests in one or more juridical persons of whatever nationality, or otherwise, at least to the extent indicated, and all debt obligations of such enterprises to such persons, direct or indirect, have been and are forever fully settled and discharged by and by reason of the aforesaid agreement; provided, however, that nothing herein contained is intended to mean or shall be construed as meaning that other claims in addition to those hereafter listed, are not similarly and forever fully settled and discharged by and by reason of the aforesaid agreement, it being expressly understood that the following list is partial only:

| Claimant | Enterprise | Interest Claimed |
|---|---|---|
| 1. American Yugoslav Electric Co. | American Yugoslav Electric Co. Branch, Belgrade. | 100% |
| International Public Service Corp. | Novisad Electric Co. | 99.82% |
| J. G. White & Co. | Vojvodina Electric Co. | 100% |
| C. R. Breck | | |
| Louise N. Breck | | |
| 2. Socony-Vacuum Oil Co. | Standard Vacuum Oil Co. of Yugoslavia | 99% |
| | Yugoslavensko Istrazivacko, a. d. | 50% |
| 3. Standard Oil of New Jersey | Yugoslavensko Istrazivacko a. d. | 50% |
| 4. International General Electric | A. E. G. Union Jugoslav Electric | 24.93% |
| 5. International Standard Electric | Yugoslav Standard Electric | 100% |
| | Teleoptik | 29% |
| 6. International Automatic Electric | Autelco | 100% |
| 7. Corn Products Refining Co. | A. D. Za Preradu Kukuruza, Pancevo | 3,000 of 4,000 shares Common<br>3,100 of 6,200 shares Preferred.* |

* The Corn Products Refining Company claim is based on pre-war 50% holding of preferred stock. In Oct. 1941 the whole issue of preferred stock (6200 shares) was transferred to Deutsche Maizena Werke, A. G., a wholly-owned subsidiary of Corn Products Refining Co. "to hold such control in trust for Corn Products and Kreditna Banca, a Yugoslav Corporation". Kreditna Banca, Pancovo, owned 50% of the preferred shares before the above-mentioned transaction. Corn Products Refining Company's claim, direct or indirect, for Preferred shares is therefore limited to 3,100 shares, or 50%.

| Claimant | Enterprise | Interest Claimed |
|---|---|---|
| 8. Leopold Pilzer<br>Laura Pilzer, directly and indirectly through "Mundus" Allgemeine Handelsundindustrie, A. G. or International Furniture, Inc., or otherwise. | Thonet-Mundus DD | 56% |
| 9. Otto Anninger<br>Robert P. Anninger<br>Victor K. Anninger<br>Ann A. Unger<br>Erna Svadron<br>George Anninger<br>Ada Werber-Laslo<br>Edwin A. Binder, directly and indirectly through Etexco, A. G. or otherwise. | D D Domace Tvornice Predenja i. Tkanja Pamuka, Duga Resa | 74% |
| 10. Alfred Stiassni<br>Hermine Stiassni<br>Margaret Stiassni<br>Ernest Stiassni<br>Karel Stiassni<br>Joseph Stiassni directly and indirectly through Hyphantia, S. A., or otherwise. | Tekstilna Industrija DD Varazdin | 100% |

| | Claimant | Enterprise | Interest Claimed |
|---|---|---|---|
| 11. | Victor Petschek<br>Eva E. Petschek<br>Walter Petschek<br>Hans Petschek<br>Fanzesca Petschek<br>Greta Gellert<br>Leopold R. Gellert<br>Marianne Gellert directly and indirectly through Salay Holdings, Ltd., or Cotonia S A, or otherwise. | "Jugoceska" Jugoslovensko ceska Tekstilna Industrija Kranj<br>Beogradska Tekstilna Industrija, Beograd<br>Prva Mehanicka Fabrika Stakla (Pancovo)<br>Cvrenka fabrika secera a. d. | 67.7%<br>67.7%<br>over 50%<br>over 50% |
| 12. | American & European Agencies, Inc.<br>E. Paul Yaselli<br>Joseph Yaselli | Fabrica Lastra Legno Reintegrato, S. A.<br>Compagnia di Antivari | 61.29%<br>57.3% |
| 13. | Leonello Stock<br>Bruno Morel-Morpugo directly and indirectly through Distillerie Stock S. A., or otherwise. | Stock Brandy<br>Medicinal DD | 54% |

Sincerely yours,

G. C. MARSHALL.

INTERNATIONAL CLAIMS COMMISSION
DEPARTMENT OF STATE
Dec 13 1954
(so stamped on original)

127 **Exhibit 5**

Washington, D. C.
April 7, 1949

The Department of State
Potomac Park Apts.
Room 717 21st & C Sts. NW
Washington, D. C.

Attention: Monroe Karasik, Esq.
Re: Mrs. Haas — Dugaresa

Dear Mr. Karasik:

Dr. Unger and I both appreciate very much the courteous receiption you extended to us on our today's visit, and your willingness to study the matter which we presented to you.

To facilitate this study, a brief recapitulation of the facts as we know them may be helpful.

One-third of the stock of Dugaresa is owned by a Swiss corporation, Etexco A.G. Prior to 1940, all the stock of Etexco had been held by an American Corporation, European Textile Corporation (hereinafter "ETC"). Three-quarters of the stock of ETC was held by clients of mine who are American citizens and whose status presents no problem. The remaining 1/4 of the stock of ETC was owned by Mrs. Lise Haas, who was an Austrian citizen. She fled Austria in 1938 and finally reached the US as a legal immigrant in July 1947. She now holds first papers and resides in Berkeley, California.

In 1940, the Nazis decreed that shares of corporations in their orbit would presumptively be considered non-Aryan property if said shares were held in a chain including more than one corporation. Since Etexco held shares of corporations in countries already under Nazi control, and since Etexco was in turn owned by another

corporation, it became imperative under this duress to eliminate ETC as the holder of Etexco shares. Accordingly, in 1940, ETC distributed the Etexco stock in its name to its four shareholders. They in turn immediately transferred the title to the shares to an American Aryan friend, Edwin A. Binder, in order to forestall Nazi confiscation.

In November 1945, Dugaresa was confiscated and claim for compensation was duly filed by its American stockholders. In this claim, and amendments thereto, all of the foregoing facts were fully reported, including specifically the facts concerning the status of Mr. Binder as the holder of 100% of the stock of Etexco, of which 75% was beneficially owned by American citizens and 25% by Mrs. Haas.

With full knowledge of these facts, I understand that on July 19, 1948, the same day that the American-Yugoslav Agreement (hereafter "Agreement") was signed, our Government submitted a list of claims to the Yugoslav Government and included therein 100% of Mr. Binder's indirect holding via Etexco. I am fully aware that this was not done with any intention to harm Mrs. Haas' interest. Yet, if the Commission might be prevented under the proposed bill from recognizing Mr. Binder (an American citizen) as a proper claimant, grave damage will be done Mrs. Haas, as explained below.

Mrs. Haas would then be compelled to seek compensation from the Yugoslavs directly (see Article 3 of the Agreement). They would undoubtedly reject her claim, asserting that their agreement with the American Government was intended to include a release of 100% of the claim for the Etexco stock. They will undoubtedly refer Mrs. Haas back to the American Government, stating that their payment of $17,000,000 was induced in part at least by the assumption that they were settling all claims on the Etexco stockholding. In taking this position, the Yugoslavs would be supported by European legal concepts regarding ownership of shares. As you know, the Europeans do not distinguish between nominal

and beneficial ownership, but view the bona fide holder of the shares as the legal owner thereof. Thus, under European law, Binder would clearly be regarded as the owner of 100% of Etexco, and being an American citizen, his claim would be fully discharged by the Agreement.

In response to an argument that the letter of July 19, 1948 was not an estoppel, since it was recognized that the final validity of claims could not then be determined, the Yugoslavs could reply that, even so, they would be entitled to rely on our Department of State not to include a claim in that letter which the Department knew would not be discharged by the Agreement. Moreover, they would emphasize that the claim had been listed with full knowledge by the Department of facts which now the Department would treat as barring the inclusion.

The Yugoslavs would take the identical position heretofore outlined in any litigation brought by Mrs. Haas to recover assets of Dugaresa located outside of Yugoslavia, and would assert that Mrs. Haas' claims were extinguished by the Agreement.

Apart from the grave potential harm to Mrs. Haas if the Bill be not appropriately amended, she has other strong equities in her favor. The Swiss have taken the position that Etexco is an American interest. In fact, but for the Nazi duress in 1940, ETC would be the claimant and not Mr. Binder. In that case, Mrs. Haas would be protected. Moreover, foreign shareholders of large American corporations (e.g., Socony Vacuum) are clearly protected under the Bill, though only doubtfully so under the Agreement, and they should be in no different or better position than Mrs. Haas.

From all of the foregoing, we feel that the equities are overwhelmingly in favor of Mrs. Haas and that every avenue of accomplishing what we consider a just result should be explored. It is our view that the participation of Mrs. Haas would not involve an expanded legal interpretation of the Agreement, any more than does the protection of foreign shareholders of an American corpo-

ration. It really involves merely a factual determination that, under the circumstances, Mr. Binder was the legal owner of the shares and entitled as an American citizen to the protection of the Agreement. From this view, the inclusion of Binder in the July 19, 1948 letter would represent merely a determination as a fact that under all the circumstances he was the legal owner of the shares and hence entitled, as an American citizen, to protection; or that if he was a nominee, he was really a nominee of ETC, an American Corporation, which, but for duress, would have continued to hold the Etexco stock.

We fully understand your position, on the other hand, that the Department would feel duty bound to oppose any extension of the general policy of the Government underlying the agreement. Nevertheless, we think that in view of the foregoing and that Mrs. Haas is now a resident and taxpayer and an expectant citizen of the United States, it should be possible to evolve a provision for insertion in the Bill which would protect Mrs. Haas de facto without expanding the intention of the coverage of the Agreement. We hope the facts contained herein and in the files of the Department will facilitate your study of the matter and that the Department will be able to suggest an amendment which it would not oppose when presented to Congress. It was our thought that an appropriate amendment could be worked into page 4, lines 20-23 of the H.R. 2963, and the equivalent place in the Senate Bill.

If any further information is desired, or I can be of aid in any way whatsoever, please call me on the phone. In any event, I would appreciate your calling when a conclusion on the matter has been reached.

Respectfully,

(signed) BERNARD E. SINGER

Bernard E. Singer
1450 Broadway
New York 18, N. Y.
Telephone—LOngacre 5-4742.

131 **Exhibit 6**

DEPARTMENT OF STATE
WASHINGTON

April 15, 1949

My dear Mr. Singer:

In your letter of April 7 you raised the problem of the interest of Mrs. Lise Haas in "Duga Resa," one of the cases affected by the U.S.-Yugoslav Claims Agreement. You pointed out that Mrs. Haas, in part, claims through Mr. Edwin A. Binder, and that Mr. Binder's claim appears to have been discharged, as between the United States and Yugoslavia, in the letter of July 19, 1948 to the Yugoslav Ambassador.

Mrs. Haas' claim through Mr. Binder was considered by the U.S. negotiators at the time of the agreement, and the intent of the negotiators is set forth in the file memorandum enclosed herewith.

Sincerely yours,

For the Secretary of State:
MONROE KARASIK
Monroe Karasik
Acting Chief, Nationalization Branch,
Division of Economic Property Policy

Enclosure:

Certified copy of
memorandum

Mr. Bernard E. Singer,
1450 Broadway,
New York 18, New York.

132 **Exhibit 6a**

April 13, 1949

MEMORANDUM FOR THE FILE
FROM: KP—Mr. C. T. Oliver
Subject: U.S.-Yugoslav agreement for Lend-Lease Military Relief and Claim, dated July 19, 1948. Claim of Edwin A. Binder (Mrs. Lise Haas, et al) with respect to "Duga Resa".

In drafting the letter of July 19, 1948 to the Yugoslav Ambassador, which specified 13 major cases in which the claims of certain named persons had been considered, and which set forth the understanding by the United States that all claims of such persons with respect to the specified properties were fully settled and discharged by reason of the claims agreement, it was known to the negotiators of the United States that the claim of Edwin A. Binder, a United States citizen, (included under No. 9) was a claim made by Mr. Binder as trustee, and that the beneficial owners represented by him included Mrs. Lise Haas, who was not a United States citizen at the time. It was the intent of the negotiators that the legal title resting in Mr. Binder should be recognized, and that, since more than a majority of the beneficial interests represented by Mr. Binder were citizens of the United States, the claim of Mr. Binder, in its entirety, should be considered as a U.S. claim.

A true copy of the signed original. HSD

133 **Exhibit 7**

DEPARTMENT OF STATE
WASHINGTON

April 15, 1949

My dear Mr. Levitan:

Thank you for your letter of April 12 enclosing a proposed addition in language to Section 4 (a) of H.R. 2963 which, you suggest, might cover one of the claims of Mrs. Lise Haas against "Duga Resa".

In view of my letter of this date to Mr. Bernard E. Singer, which I understand from Mr. Singer he will show you, it would not appear to be necessary to modify the bill.

Sincerely yours,

/s/ Monroe Karasik
Acting Chief, Nationalization Branch
Division of Economic Property Policy

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**Exhibit 8**

April 21, 1949

Hon. Tom Connally
Chairman of the Senate Committee
on Foreign Relations
The Senate
Washington 25, D. C.

Re: S. 1074

Dear Sir:

We beg to call to your attention the exchange of correspondence with the Department of State with reference to the above legislation which has been referred to your Committee. The purpose of calling this material to your attention is to make certain that the legislative intent in this legislation is that the claim of one, Mr. Edwin A. Binder, an American Citizen, be considered in its entirety a claim within the terms of the Yugoslav Claims Agreement of 1948. As the Committee is undoubtedly aware, the memorandum of July 19, 1948, referred to in enclosure 1 below, specified for the Yugoslav Government that the Binder claim was one of the claims considered and released under the agreement with that government.

We transmit to you photostats of the following documents:

1. Letter of Mr. Bernard E. Singer to the Department of State, dated April 7, 1949.

2. Letter to Messrs. Javits & Javits to the Department of State, dated April 12, 1949.
3. Response of April 15 from the Department of State to Mr. S. J. Levitan of Javits & Javits.
4. Letter of the Department of State to Mr. Singer, dated April 15, 1949.
5. "Memorandum for the Files" of the Department of State stating that it was the intent of the negotiators on behalf of the United States "that the legal title resting in Mr. Binder should be recognized, and



that, since more Than a majority of the beneficial interests represented by Mr. Binder were citizens of the United States, the claim of Mr. Binder, in its entirety, should be considered as a U. S. claim."

In view of the negotiations reflected in the memorandum of the State Department and the view of that Department that the proposed legislation contemplates that Mr. Binder's claim is included within the terms of the Yugoslav Claims Agreement of 1948, we refrain from proposing any amendment to the subject legislation, which we would do if there were any doubts on the point. We respectfully suggest that in order that the legislative record may be complete the report of your Committee include a reference to this communication and supporting material.

We would appreciate an acknowledgment of this communication and an opportunity to furnish any additional information which you desire.

Sincerely yours,

JAVITS, LEVITAN & HELD

encls.
registered mail
a similar letter to Hon. John Kee
House Committee on Foreign Affairs

136 **Exhibit 9**

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D. C.

Docket No. Y-1036
Decision No. 1535

In the Matter of the Claim of

EDWIN A. BINDER, 60 Beaver Street, New York 4, New York
ANN A. UNGER, 2524 Warring Street, Berkeley 4, California
ROBERT P. ANNINGER, 44 Cortland Avenue, New Rochelle, New York
VICTOR K. ANNINGER, 395 Riverside Drive, New York, New York
and
LISE HAAS, 2328 Rose Street, Berkeley 8, California
Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949

Counsel for Claimants:
BERNARD E. SINGER, Esquire, 50 Broadway, New York 4, New York
MILTON POLLACK, Esquire, 111 Broadway, New York 6, New York
RAOUL BERGER, Esquire, 1200 18th Street, N.W., Washington 6, D. C.

## PROPOSED DECISION OF THE COMMISSION

This is a claim for $4,012,500 by "Edwin A. Binder and/or Ann A. Unger, Robert P. Anninger, Victor K. Anninger and Lise Haas," and is for the taking by the Government of Yugoslavia of the National Cotton Spinning and Manufacturing Company, Ltd., in which the claimant, Edwin A. Binder, or the other claimants indirectly owned a total interest represented by 7500 shares of stock out of a total of 22,500 shares outstanding. Claimants Ann Unger, Robert P. and Victor K. Anninger have also filed individual claims with the Commission for direct ownership of other stock holdings in the National Cotton

Spinning and Manufacturing Company, Ltd., hereinafter called "Dugaresa."

It is established that Edwin A. Binder has been a citizen of the United States since his naturalization on August 4, 1917; Ann A. Unger since her naturalization on August 21, 1944; Robert P. Anninger since his naturalization on May 18, 1944; and Victor K. Anninger since his naturalization on March 19, 1945. It is admitted that claimant Lise Haas was not a citizen of the United States when the claim was filed.

It has been established upon investigation and inquiry by the Commission's staff, and by admission of the Yugoslav Government, that Dugaresa was confiscated by that Government by Decision of the District Court in Karlovac, No. K.Z. 479/45, of November 20, 1945, pursuant to the Confiscation Act of June 9, 1945 (Official Gazette No. 40 of June 12, 1945). The confiscation was affirmed by the Superior Court of Croatia on December 20, 1945, Decision No. K 728/45. On the basis thereof, the Commission finds that the property was taken on the latter date.

It is asserted by claimants:

(1) That before World War II, one-third of the capital stock of "Dugaresa" was held by a Swiss corporation, Etexco A.G., which as a holding company held shares of various other corporations located in German-occupied countries;

(2) That all of the Etexco shares in turn were held by an American company, European Textile Corporation, whose stock was owned in equal quarter blocks by claimants Ann Unger, Robert and Victor Anninger and Lise Haas;

(3) That, to avoid confiscation by the German Government which had decreed that corporations whose stock was held in a pyramid which included more than one corporation would be considered non-Aryan, European Textile Corpora-

tion in 1940 distributed all shares of Etexco to its four stockholders as a dividend in kind;

(4) That, being persons of Jewish faith, the four stockholders then transferred their Etexco stock to Binder, an Aryan, who agreed to serve as apparent owner thereof in behalf of the beneficial owners, to preserve the property from Nazi seizure; and

(5) That Binder remained as the sole owner of record of the Etexco stock (except for 15 qualifying shares nominally held by three directors) from 1940 to 1950 when Etexco was dissolved for tax reasons, with all the assets, subject to all liabilities, to be transferred to Binder.

Documents have been filed evidencing the deposit of 7500 shares of "Dugaresa" stock by Etexco in a Yugoslav bank. Claimants allege that the shares were registered in 1946 with the Yugoslav Consulate General in Zurich, Switzerland, as required by Yugoslav law. The Yugoslav Government has confirmed the deposit and registration in the name of Etexco with Binder as the owner. Additionally, there has been filed a certified statement from the Swiss Trust Company to the effect that during all of the year 1946 it held 485 shares of Etexco stock for Binder as owner with 15 additional shares in the names of director-nominees. Certified balance sheets of Etexco for 1944, 1945 and 1946 from the Swiss Trust Company also evidence ownership of 7500 shares of Dugaresa stock. As evidence of the relationship between claimants Ann Unger, Robert and Victor Anninger, Lise Haas and Edwin Binder, with respect to the Etexco stock, there have been filed photostatic copies of letters dated February 17 and 19, 1941 addressed to Binder by the other four claimants in which they set forth the terms of their transfer to him of the Etexco shares to hold, not as owner in fact, but as ostensible owner. These letters bear the signature of

Edwin Binder in confirmation of the understanding which included an agreement that Binder would return the shares to the four owners upon demand.

On the basis of the foregoing, the Commission concludes that Etexco owned 7500 shares of Dugaresa stock at the time the latter was taken by the Government of Yugoslavia in 1945, and that Etexco in turn was then owned by Ann Unger, Robert and Victor Anninger and Lise Haas in equal shares.

Claimants assert that under applicable Swiss law, Binder is sole owner of the shares, that is of the Dugaresa shares through his ownership of the Etexco shares, and that as a United States citizen he has standing to maintain this claim. Under American law, it is argued, Binder is a constructive trustee for predominantly American beneficiaries (one of the four, Lise Haas, not being a citizen), and that the legislative history of the International Claims Settlement Act of 1949 shows an intent to recognize in their entirety claims by "judicial trustees." Additionally, it is also contended that there was a specific understanding by the negotiators of the Agreement of July 19, 1948 between the United States Government and the Government of Yugoslavia that the "Binder-Haas" claim was to be recognized as part of a claim asserted by Binder on behalf of all four beneficial owners.

As the claimants themselves have stated in their memorandum concerning the eligibility of the Binder-Haas claim, the important point is to ascertain the real intention of the parties (to the Yugoslav Claim Agreement of 1948). It is our view that the claims encompassed by the Agreement are solely and exclusively claims of nationals of the United States on account of their direct and indirect interests in "property and rights and interests in and with respect to property" in Yugoslavia which were taken by the Government of Yugloslavia. Claimants eligible to participate in the fund are defined in Article 2 of the International Claims Settlement Act of 1949, sub-paragraph (c) of which provides that there are included claims

of nationals of the United States respecting property, and rights and interests in and with respect to property, which at the time of nationalization or other taking were—

> "Indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through interests direct or indirect in one or more juridical persons not within category (B) above, or otherwise."

It cannot be accepted that the ostensible owner of the Etexco shares, Binder, was a "juridical trustee," for clearly the relationship between Binder and the true owners of Etexco did not create a juridical person "organized under the laws of the United States, or a constituent state or other political entity whereof" as contemplated by the Act. We also understand that he could not be considered as a "juridical person" under the laws of Switzerland. It follows that those American nationals who at the time of the taking of Dugaresa indirectly owned an interest therein through Etexco, a juridical person not within category (B) because it was a Swiss corporation, are eligible claimants but non-nationals are not. The Commission, therefore, views this claim as one by the real or beneficial owners of the Etexco shares and not as a claim by Binder on his own behalf.

Were the intent of the legislation and the definitions set forth therein such as to leave the question in doubt, the Commission finds ample support for its conclusion by reference to the policy of the United States in its espousal of claims and international precedent. The following is quoted from Moore's *Arbitrations*, p. 1353:

> "The person who had 'the right to the award' must, it was further held, be considered as the real claimant by the Commission and whoever he might be, must 'prove himself to be a citizen' of the government by which the claim was presented. Alvarez (U.S.) v.

Mexico, July 4, 1868." See also Wilt (U.S.) v. Venezuela, December 5, 1885, ibid 2246.

Borchard in *The Diplomatic Protection of Citizens Abroad*, p. 634, states:

> "It has been observed that the Commission will look behind the administrator or person acting in a representative capacity to determine the nationality of the real claimant or beneficiary although in some cases the investigation was limited to the citizenship of the person upon whom the injury was originally inflicted."

and at pp. 642-43:

> "That the Department of State in its diplomatic support of claims looks to the citizenship of the real or equitable owner of the claim as distinguished from the nominal or ostensible owner appears from sections on corporations, administrators and assignees."

The Commission, therefore, concludes that the claim of Lise Haas was not a claim of a national of the United States at the time of the taking of Dugaresa and was not settled by the Agreement of July 19, 1948, or within the jurisdiction of this Commission.

For the foregoing reasons, the claims of Edwin Binder, individually, and of Lise Haas are denied.

For the reasons stated in the Proposed Decision on the claim of Bernard E. Singer, Executor for the Estate of Otto Anninger, deceased, a copy of which is annexed, the Commission finds the value of the Dugaresa stock to be $95 per share. Accordingly, the value of the individual indirect interests of Ann Unger, Robert and Victor Anninger in Dugaresa are found to have a value of $178,125 each.

## *AWARD*.

On the above evidence and grounds, this claim is denied in part and allowed in part, awards being hereby made to Ann Unger, Robert P. Anninger and Victor K. Anninger,

claimants, in the amount of $178,125 each, with interest thereon at 6% from December 20, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of $28,319.42 * to each.

Awards have previously been made to claimants Ann Unger, Robert P. Anninger and Victor K. Anninger in Decision Nos. 1481, 1482 and 1483.

Dated at Washington, D. C.
November 26, 1954

I hereby certify that the within is a true and correct copy of the original Prepared Decision on file with the Commission.

[SEAL]

Deputy Clerk of the Commission

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see the attached copy of its decision in the claim of Joseph Senser.

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**Exhibit 10**

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D. C.

## FINAL DECISION

Thirty days have elapsed since the issuance of the Commission's Proposed Decision in this claim and the claimants have filed objections thereto with a brief in support thereof, and the Government of Yugoslavia has filed a brief as *amicus curiae*.

At a hearing duly scheduled, counsel for the claimants presented argument in support of the objections, contending that the disallowance of the claims of Edwin A. Binder and Lise Haas is erroneous in that:

a) it nullifies the understanding of the negotiators of the Yugoslav Agreement that the Binder-Haas claim was to be covered by and included under said Agreement;

b) it frustrates the intention of Congress that said claim was to be satisfied by the Commission;

c) the Government is estopped to repudiate its representations to said claimants that said claim was covered by the Agreement and that clarifying legislation was therefore unnecessary.

Additionally, claimants objected to the value placed upon the stock of "Dugaresa" and by reference, adopted the brief, evidence and argument submitted in the *Matter of the Claim of Bernard E. Singer, Executor for the Estate of Otto Anninger, Deceased,* Docket No. Y-390, Decision No. 1474.

The brief and argument of counsel are essentially the same as presented in the *Claimants' Memorandum Respecting Eligibility of Edwin A. Binder—Lise Haas* which was submitted with the claim. They will be considered at some length since they involve a construction of the terms of the Claims Agreement and the intention of its negotiators. It is first asserted that by a "side agreement" or "footnote" to the Yugoslav Claims Agreement of 1948 the parties thereto specifically agreed that the claim of Binder would be allowed in its entirety although it was known that one of the four beneficial owners, Lise Haas, was not a national of the United States. Upon examination, the so-called "side agreement" is found to be a letter of July 19, 1948 addressed to the Yugoslav Ambassador by the United States Secretary of State. While this unilateral document does list the Binder claim as one of a number deemed and understood to have been fully settled and discharged by reason of the Yugoslav Claims Agreement, the Commission does not view the letter as an agreement, nor as evidence of the intention

of the United States and Yugoslav negotiators of the agreement that the claims listed therein be allowed as adjudicated claims. It is noted that the letter here involved prefaces the statement of understanding with the specific proviso:

> "Without prejudice to the free exercise of such authority and discretion as may be vested in any agency that may be established or otherwise designated by the Government of the United States to adjudicate claims, ***"

Despite this reservation to this Commission of the free exercise of authority and discretion, counsel for the claimants takes the position that the Commission would have no jurisdiction other than to grant the claim. (transcript p. 13). The legislative history of the International Claims Settlement Act of 1949, whereby Congress set up the procedures for adjudication of the Yugoslav claims, does not provide support for that position. In reviewing and explaining the Claims Agreement to the members of Congress, Mr. Jack B. Tate, Acting Legal Adviser, Department of State, said (pp. 7 and 13, Hearings before the House Committee on Foreign Affairs, 81st Congress, on H.R. 4406):

> "You must realize that those claims have in no way been adjudicated, and it is not anticipated that the claims, when adjudicated will be found valid to the extent of 100% of the amount claimed."
>
> * * * * * * * * * * *
>
> "As to the validity of his claim, I would not like to say here, because that is the purpose of the establishment of the Commission, to get these claims adjudicated, and I would not like to anticipate that adjudication."

Counsel for claimants next asserts that it was the intention of Congress that this claim was to be satisfied

or allowed in its entirety. The references to legislative history are not always directly in point, since the Commission is charged with the consideration of claims under an executive agreement, the Yugoslav Claims Agreement of 1948, while the action of Congress relates to the International Claims Settlement Act of the following year. Be that as it may, Congress, in providing for this Commission and its procedure, was well aware that it could do nothing to modify the Agreement which had already been entered into and was valid without Congressional aproval. As Congressman Javits stated (at p. 28 of the House Hearings — see also the remarks of Chairman Kee and Congressman Ribicoff at pp. 44 and 51):

> "**** here is an agreement in which the House and Senate do nothing whatever. We are completely precluded. I just wanted to make that clear of record."

Irrespective of the power of Congress with regard to the terms of the Agreement, it is conceded that some indication as to the intention of the United States negotiators may be found in an examination of the legislative history of the International Claims Settlement Act.

With respect to the meaning of the term "juridical person," as found in the Agreement, the House Hearings provide the following statement by Mr. Samuel Herman, Office of the Legal Adviser, Department of State, in answer to a question by Congressman Javits in which he "assumed" that the term "means corporations or trustees": p. (30)

> "If you go into Article 2 of the Agreement itself, you will see that 'juridical persons' in (B), for example, are referred to as those 'organized under the laws of the United States or other political entity thereof' *** We also, accept the proposition that *in the absence of an American juridical person organized under American laws, only the individual rights*

*of American beneficial owners* are covered." (Emphasis supplied)

In this claim the Comission finds no "juridical person" organized under the laws of the United States or other political entity thereof. Instead, we find only a mere agency, for it is admitted that the owners of Etexco stock requested Binder to serve as apparent owner to preserve their property from Nazi seizure.

It is correct, as counsel for claimants cited in his memorandum and brief, that Congressman Javits persisted in his questions on the assumption that there could be a "juridical" trustee under the definition of the Agreement. However, counsel has not quoted the complete answer of Mr. Herman, which apparently was in reference to the claim herein. In its entirety his answer was (p. 31):

> "That, I think, is the fact in at least one claim of which we are aware, of which we have knowledge in the State Department. *I do not want to state my personal view on this in any way that would bind the Commission in adjudicating a claim,* should a claim containing that feature come up before the Commission, but *my general feeling* has been that the legal title, if it is held by an American national, covers the beneficial interest under the trustee, if the beneficial interests are substantially American." (Emphasis supplied)

The Commission does not view such a qualified, personal expression of opinion by one member of the State Department as conclusive as to the intent of the negotiators of the Agreement, nor such a representation by an official of the United States Government as to work an estoppel. The International Claims Settlement Act of 1949 itself reserves to this Commission the sole responsibility for adjudication of these claims:

> "The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States, or by any court by mandamus or otherwise."

The Commission is directed, by that Act, to apply the terms of the applicable agreement, utilizing such portions of the negotiating history of the Agreement as it deems legally significant in the ascertainment of intent and meaning, and thereafter, if necessary to decision, to apply, in order, the applicable provisions of international law, justice, and equity. The Commission utilized all of the foregoing criteria in its Proposed Decision on this claim and found no ground for departure from the traditional policy of our government with respect to the espousal of the claims of non-nationals. Upon careful consideration of the arguments of claimants' counsel, and review of all the record in this claim, the Commission reasserts the position taken in such Proposed Decision with respect to the claims of Edwin A. Binder and Lise Haas. As stated in the House Hearings (*supra*) by a representative of the State Department:

> "This is an Agreement that covers a large category of claims over a certain period for American nationals who were American nationals at the time the wrong ocurred, because that is the principle of international law. We can only espouse claims American in origin *** They are American in origin if the man was an American at the time the property was (1) nationalized, or (2) otherwise taken."

Accordingly, the Commission hereby adopts its Proposed Decision as it Final Decision herein, with the following exception:

> For the reasons set forth *In the Matter of the Claim of Bernard E. Singer, Executor for the Estate of*

*Otto Anninger, Deceased,* Docket No. Y-390, Decision No. 1474, the fair and reasonable value of the stock of "Dugaresa" at the time of taking is found to be $105 per share rather than the lesser amount set forth in the Proposed Decision.

Therefore, in full and final disposition of the claim, awards are hereby made to Ann Unger, Robert P. Anninger, and Victor K. Anninger, claimants, each in the amount of $196,875, with interest to each in the amount of $31,521.46.

Dated at Washington, D. C.
December 30, 1954

I hereby certify that the within is a true and correct copy of the original Final Decision on file with the Commission.

/s/ A. C. COATES
Deputy Clerk of the Commission
[SEAL]

148 **Exhibit 11**

DEPARTMENT OF STATE
WASHINGTON

In reply refer to L/E

December 14, 1954

Foreign Claims Settlement Commission,
Tariff Building,
F Street between 7th & 8th Streets, N.W.,
Washington, D. C.

Sirs:

Reference is made to the claim of Edwin A. Binder and Lise Haas, Docket No. Y-1036, before the Foreign Claims Settlement Commission.

In this connection the Department transmits to you a copy of the letter of November 30, 1954 from the attorney for the claimant. Copies of the enclosure and exhibits to this letter, as well as of a new brief of December 3, 1954, are understood to be in the Commission's hands.

The Department appreciates, of course, that the matter of adjudicating on the claim involved here is solely one for the Commission. The Department requests that in its deliberations on the claim the Commission give appropriate consideration to the statements made at various times by the Department representatives, Mr. Covey T. Oliver, Mr. Monroe Karasik and Mr. Samuel Herman, with respect to this claim.

Very truly yours,

For the Acting Secretary of State:
STANLEY D. METZGER
Stanley D. Metzger
Assistant Legal Adviser for
Economic Affairs

Enclosure:
From Mr. Raoul Berger,
November 30, 1954.

* * * * * * * * * * *

152 **Answer**

[Filed December 28, 1955]

FIRST DEFENSE

The complaint fails to state a cause of action.

SECOND DEFENSE

Answering specifically the numbered paragraphs of the complaint, defendants aver:

1. Admit the allegations contained in par. (1), except that section 4(b) of the International Claims Settlement Act of 1949 (22 U.S.C. § 1623(b) 64 Stat. 13) provides

that "the action of the Commission in allowing or denying any claim under this chapter shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court or mandamus", and that consequently the court has no jurisdiction to entertain the present complaint.

2. As to par. (2) deny knowledge or information as to the date when plaintiff allegedly became a citizen of the United States.

3. Admit allegations contained in par. (3) and (4).

4. Admit the allegations contained in par. (5) except that the correct statement as to the compensability of claims should read as follows:

"The claims of nationals of the United States . . . include those respecting property . . ., which at the time of nationalization or other taking were:

(A) directly owned by an individual who at such time was a national of the United States;

(B) directly owned by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any loss of the outstanding securities of which were at such time owned by individual nationals of the United States, directly, or indirectly through interests in one or more juridical persons of whatever nationality, or otherwise; or

(C) indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through interest, direct, or indirect in one or more juridical persons not within category (B) above, or otherwise."

5. Admit allegations contained in par. (6), (7) and (8) except that the correct date of confiscation of the prop-

erty of "DUGARESA" by the Government of Yugoslavia was December 20, 1945 and not November 20, 1945.

6. Deny allegations contained in par. (9) with respect to the intentions of the negotiators of the Yugoslav Claims Agreement of 1948 to provide full settlement of, and full compensation for the entire DUGARESA claim of Binder and that the claim was intended to be a compensable claim in its entirety.

7. Deny all allegations contained in par. (10), and specifically deny that the interest of the plaintiff was mentioned in a list of claims which were deemed settled and discharged by the Agreement. The letter of July 19, 1948, addressed to the Ambassador of Yugoslavia by the Secretary of State contains the following text pertinent to the claim of Edwin Binder:

"Without prejudice to the free exercise of such authority and discretion as may be vested in any agency that may be established or otherwise designated by the Government of the United States to adjudicate claims, the Government of the United States confirms that during the course of negotiations leading up to the execution of the agreement with the Yugoslav Government regarding pecuniary claims of the United States and its nationals, claims of the following named persons with respect to the property and rights and interests in and with respect to the enterprises hereinaffer set forth and to the extent indicated, were considered, and that it is deemed and understood by the Government of the United States that the obligations of the Government of the Federal People's Republic of Yugoslavia to such persons with respect to such property and any rights and interests in and with respect to such enterprises, direct or indirect through interests in one or more juridical persons of whatever nationality, or otherwise, at least to the extent indicated, and all debt obligations of such persons, direct or indirect, have been and are forever fully settled and discharged by and by reason of the

aforesaid agreement; provided, however, that nothing herein contained is intended to mean or shall be construed as meaning that other claims in addition to those hereafter listed are not similarly and forever fully settled and discharged by and by reason of the aforesaid agreement, it being expressly understood that the following list is partial only:

| *Claimant* | *Enterprise* | *Interest Claimed* |
|---|---|---|
| Otto Anninger | D. D. Domace | 74% |
| Robert P. Anninger | Tvornice Predeaja | |
| Victor K. Anninger | I Tkanja Pamuka | |
| Ann A. Unger | Duga Resa | |
| Erna Svadron | | |
| George Anninger | | |
| Ada Werber-Laslo | | |
| Edwin A. Binder, directly and indirectly through ETEXCO A.G., or otherwise. | | |

8. Deny the allegations contained in par. (11) with respect to the contention that the Department of State advised Congress of the facts stated in paragraphs (9) and (10) of the plaintiff's complaint. Deny knowledge and information sufficient to have a belief as to the re-remaining allegations contained in par. (11).

9. Admit allegations contained in par. (12), (13), and (14), except that no statements were made by officials of the Department of State that the Binder-Haas claim was compensable despite the non-citizenship of plaintiff.

*FOR A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS ALLEGE:*

10. That under section 4(b) of the nIternational Claims Settlement Act of 1949 actions of the Commission in allowing or denying claims are final and not subject to review by this or by any court.

11. That Proposed and Final Decision No. 1535 of the Commission with respect to the claim of the plaintiff passed upon all objections and ~~contentions now~~ alleged in the complaint, including the allegations that the Agreement between Yugoslavia and the United States of July 19, 1948, excepted the plaintiff from the general requirement of citizenship. The Commission found in Proposed and Final Decision No. 1535, that the claims listed in the letter of July 19, 1948, to the Yugoslav Ambassador contained the proviso that the statements therein are made without prejudice to the free exercise of the authority and direction of the Commission having jurisdiction to adjudicate the claims. In addition, the claim of the plaintiff is not even mentioned in the aforesaid letter. Mentioned is only the claim of "Edwin A. Binder, directly or indirectly through ETEXCO A.G., or otherwise." While the claim of Edwin A. Binder as a so-called trustee has been disallowed, because he was found to have been a mere agent of the beneficial owners, awards to three beneficial owners have been made to each in the amount of $196,875 plus interest to each in the amount of $31,521.46. The plaintiff's claim, not having met the requirements of the Yugoslav Claims Agreement of 1948 as to United States nationality, had to be denied. This denial was made not only on the basis of the aforesaid Agreement, but following the well settled principle of international law, and also a long established policy of the Department of State according to which claims of aliens against foreign governments are not espoused by the Government of the United States.

12. The letter of July 19, 1948, addressed to the Yugoslav Ambassador, is in the nature of a release granted by the Government of the United States to the Government of Yugoslavia with respect to a limited number of claims. Through this release the Government of Yugoslavia was assured that the claimants listed in the letter were considered when the Agreemnt of July 19, 1948, was con-

cluded and signed. The Government of Yugoslavia would have used the letter if these same claimants would have appeared before a foreign commission with identical claims as shareholders of foreign (~~British, Swiss, French, etc.~~) corporations. The letter precluded the Swiss corporation ETEXCO A.G. from appearing as a claimant before a Swiss-Yugoslav Commission for the settlement of claims with respect to the DUGARESA enterprise. However, nothing in this letter precluded the defendant Commissioners from exercising their authority in adjudicating the Binder claim. The adjudication was contemplated and foreseen in the very preamble of the letter, and the Commission was not only entitled, but duty-bound to investigate the claim and to determine its validity and extent under the applicable principles of international law, justice and equity (22 USC 1623). The opinions of certain officials of the State Department cited in Exhibits 6, 6a and 7 by the plaintiff, that the claim was considered when the Claims Agreement was being negotiated, were equally not binding upon the Commission. However, the qualified opinions of these officials do not state that the claim of the plaintiff was in any way adjudicated by the negotiators; they only state that Edwin Binder's claim was considered by the negotiators. The claim has also been considered by the Commission and was disallowed to the extent that the claim was determined to be a claim of Binder's principals, and not of Binder as an agent. One of the principals did not qualify as a claimant, because she did not meet the nationality requirements. Through this action Binder's claim was allowed in favor of three of his four principals whom he represented, and disallowed as to one (the plaintiff).

13. That after the Proposed Decision was issued claimant requested a hearing, which was held on December 14, 1954, and that he filed prior and after the hearing objections, exceptions, new evidence and supplementary briefs, all based upon the same issues she is now raising before the Court. These issues have been discussed and

fully determined in the Commission's Final Decision of December 30, 1954. The amount of the award was increased to the three claimants who have been United States nationals from $178,125 each to $196,875 each plus interest, due to the fact that the shares of stock of the DUGARESA enterprise had been revaluated. However, the denial of the plaintiff's claim was affirmed by the Final Decision for the reasons set forth above.

14. That section 6 of the Act, as amended (22 USC 1625) provides that "the Commission shall complete its affairs in connection with the settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954."

15. That the claim filed by plaintiff with the Commission arose under the aforesaid Agreement, as is conceded by plaintiff, and consequently this Commission has no further power, authority or jurisdiction to entertain such a claim, nor has it any power, authority or jurisdiction to render a new decision of any such claim.

WHEREFORE, having fully answered, defendants demand judgment together with the costs of this suit.

/s/ LEO A. ROVER
Leo A. Rover,
*United States Attorney.*

/s/ OLIVER GASCH
Oliver Gasch,
*Assistant United States Attorney.*

/s/ FRANK H. STRICKLER
Frank H. Strickler,
*Assistant United States Attorney.*

/s/ ROBERT L. TOOMEY
Robert L. Toomey,
*Assistant United States Attorney.*

159 **Amendment of Complaint**

[Filed March 9, 1956]

Plaintiff hereby amends her complaint in this action in the following respects:

1. The words "FIRST COUNT" are inserted as a heading just prior to the heading "Parties and Jurisdiction" on page 1.

2. On page 6, just after paragraph 18 and before the prayer for relief, the following is added:

SECOND COUNT

19. Plaintiff realleges the allegations of paragraphs 1-16 above as fully as though physically set forth in this Second Count.

*Constitutional Rights*

20. Plaintiff has a right, under the Fifth Amendment to the Constitution of the United States, to share in the Yugoslav Claims Fund and for compensation for the settlement and release of her claim.

FISCHER, WILLIS & PANZER
*Attorneys for Plaintiff*
By:.....
Irving R. M. Panzer

161 **Answer to Amendment of Complaint**

[Filed March 12, 1956]

SECOND DEFENSE

20. The allegation contained in paragraph 20 of the complaint is a conclusion of law which defendants are not required to answer. If answer be required, however, the said allegation is denied.

/s/ LEO A. ROVER
Leo A. Rover
United States Attorney
/s/ OLIVER GASCH
Oliver Gasch
Assistant United States Attorney
/s/ FRANK H. STRICKLER
Frank H. Strickler
Assistant United States Attorney
/s/ ROBERT L. TOOMEY
Robert L. Toomey
Assistant United States Attorney

* * * * * * * * * * *

162 **Motion for Preliminary Injunction**

[Filed March 12, 1956]

Plaintiff moves that, pending the final hearing and determination of this action, this Court issue a preliminary injunction restraining defendant Humphrey and his agents or employees from making any payments out of the Yugoslav Claims Fund which would reduce that fund to an amount less than $228,396.46, which is the amount fixed by the other three defendants (acting as the Foreign Claims Settlement Commission) as attributable to an eligible award based on a property interest identical with that of plaintiff. The ground for this motion is that if defendant Humphrey exhausts the funds now in the Yugoslav Claims Fund, this case will become moot and plaintiff will be deprived of the opportunity to vindicate her claim since, as is shown by the verified complaint, the Yugoslav Claims Fund is the only source from which

plaintiff's claim can be paid. If she cannot recover from that fund, she cannot recover at all. No undue inconvenience or loss will be caused to defendants, but irreparable injury will be caused to plaintiff if a preliminary injunction is not issued by this Court.

This Motion for Preliminary Injunction has not been filed prior to this time because no monies have been paid out of the Yugoslav Claims Fund pending the final disposition of the case of *de Vegvar* v. *Gillilland*, decided favorably to the Government on December 22, 1955 by the Court of Appeals for the District of Columbia Circuit. That case involved the Yugoslav Claims Agreement as does the case at bar, although the cases present different issues.

The Supreme Court is expected to act on a petition for certiorari in the *de Vegvar* case at any time. If the Court denies certiorari, thus finally terminating the litigation, defendant Humphrey will be free to pay out the monies contained in the Yugoslav Claims Fund. The protective power of this Court is sought against precipitate action by defendants before plaintiff's rights can be determined in this action.

FISCHER, WILLIS & PANZER
1735 De Sales Street, N. W.
Washington, D. C.
By: .....
Irving R. M. Panzer

217 **Motion to Dismiss or in the Alternative for Summary Judgment**

[Filed July 6, 1956]

Come now defendants by their attorney, the United States Attorney, and move the Court to dismiss the complaint upon the ground that the Court lacks jurisdiction of the subject matter of this action. In the alternative, defendants move the court to enter summary judgment in their favor upon the ground that there are no

genuine issues of material fact and they are entitled to judgment as a mattetr of law.

/s/ OLIVER GASCH
Oliver Gasch,
*United States Attorney.*
/s/ EDWARD P. TROXELL
Edward P. Troxell,
*Principal Assistant United States Attorney.*
/s/ FRANK H. STRICKLER
Frank H. Strickler,
*Assistant United States Attorney.*
/s/ ROBERT L. TOOMEY
Robert L. Toomey,
*Assistant United States Attorney.*
*Attorneys for Defendants.*

233 **Cross-Motion for Summary Judgment**

[Filed September 27, 1956]

Plaintiff moves for summary judgment on the ground that there are no genuine issues of material fact and she is entitled to judgment as a matter of law.

FISCHER, WILLIS & PANZER
1735 De Sales Street, N. W.
Washington, D. C.
*Attorneys for Plaintiff.*

By .....
Irving R. M. Panzer
.....
Laurence S. Fordham

70 **Oral Ruling of the Court**

[Filed February 20, 1957]

THE COURT: (Pine, J.) I think the case has been fully argued. I am aware of the problems involved and I am ready to rule, gentlemen.

I am of the opinion that this claim does not come within any of the classes of permissible claimants; that the Court does not have jurisdiction by virtue of the Act of Congress; and that there is no showing of any constitutional deprivation of the kind suggested by Judge Washington in the de Vegvar case.

Under those circumstances the motion for summary judgment should be granted to the defendants, and the motion for summary judgment of the plaintiff should be denied.

259 **Order**

[Filed January 29, 1957]

This cause having come on to be heard on the defendants' motion to dismiss or in the alternative for summary judgment and the plaintiff's cross motion for summary judgment and the Court having considered the pleadings filed herein together with the exhibits and the oral argument of counsel for the plaintiff and defendants, it is this 29th day of January, 1957,

ORDERED that the defendants' motion to dismiss be granted on the ground that this Court lacks jurisdiction of the subject matter of this action, and the complaint is hereby dismissed, and it is

FURTHER ORDERED that the plaintiff's motion for summary judgment be and the same is hereby denied with costs to the defendants, and it is

FURTHER ORDERED that the Secretary of the Treasury of the United States be and he is hereby enjoined for a period of two weeks from the date hereof from making

payments out of the Yugoslav Claims Fund, which would reduce the total amount in such fund to less than $228,396.46 in order that the plaintiff may make application to the United States Court of Appeals for the District of Columbia Circuit for a continuation of the injunctive relief granted herein until final disposition of her appeal in that Court.

/s/ DAVID A. PINE, *Judge.*

261 **Notice of Appeal**

[Filed February 7, 1957]

Notice is hereby given this 7th day of February, 1957, that plaintiff Lise Haas appeals to the United States Court of Appeals for the District of Columbia Circuit from the judgment of this Court entered on the 29th day of January, 1957 in favor of defendants against plaintiff.

.....

Irving R. M. Panzer,
*Attorney for Plaintiff.*

## APPENDIX B

INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949,
64 STAT. 12, 22 U.S.C. 1621 et seq.

### AN ACT

To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "International Claims Settlement Act of 1949".

SEC. 2. For the purposes of this Act—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(d) The term "Yugoslav Claims Agreement of 1948" means the agreement between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regarding pecuniary claims of the United States and its nationals, signed July 19, 1948.

SEC. 3. (a) There is hereby established in the Department of State a commission to be known as the International Claims Commission of the United States (hereinafter referred to as the "Commission") and to be composed of

three persons, to be appointed by the President by and with the advice and consent of the Senate. One of such members shall be designated by the President as the Chairman of the Commission and each shall receive compensation at the rate of $15,000 per annum. Two members of the Commission shall constitute a quorum for the transaction of business. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of an original appointment; *Provided*, That in the event of the death, resignation, absence, or disability of a member, the President may designate an acting member from among persons in the judicial or in the executive branch of the Government (including employees of the Commission), who possess the qualifications prescribed by this subsection, to temporarily perform without additional compensation the duties of the member until a successor is appointed or the absence or disability of the member shall cease.

(b) The principal office of the Commission shall be in the District of Columbia. The Secretary of State, in accordance with the provisions of the civil-service laws and the Classification Act of 1923, as amended, upon the recommendation of the Commission, may appoint and fix the compensation of an executive director, and of officers, attorneys, investigators, and other employees.

(c) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this Act. Any member of the Commission may be removed by the Secretary of State, upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through

the Secretary of State, to the Congress concerning its operation under this Act. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case.

SEC. 4 (a) The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof. In the decisions of claims under this Act, the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity.

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, with notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission

has jurisdiction under this Act. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this Act shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpoena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpoena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letters rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this Act, shall forfeit all rights under this Act, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f) In connection with any claim decided by the Commission pursuant to this Act in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence

that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided however*, That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereto, any such person shall forfeit all rights under this Act.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this Act. Any and all payments required to be made by the Secretary of the Treasury under this Act pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and

grounds therefor, and if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this Act.

SEC. 5. The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this Act. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this Act for transmission to the foreign government concerned.

SEC. 6. The Commission shall complete its affairs in connection with settlement of United States-Yugoslav

claims arising under the Yugoslav Claims Agreement of 1948 not later than four years following the effective date of this Act: *Provided,* That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be effected under the provisions of this legislation.

SEC. 7. (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this Act, an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest, certified pursuant to section 5 of this Act, in accordance with the award. Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b) There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 3 per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this Act shall be made only to the person or persons on behalf of whom the award is made, except that—

(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided,* That if the total award is not over $500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on

behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Comptroller General of the United States to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such ward, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury, or the Comptroller General of the United States, as the case may be, shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents, or employees with respect to such payment.

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this Act.

(f) Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

SEC. 8. (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claim Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Act. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this Act shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby permanently appropriated for the making of the payments authorized by section 7 of this Act.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of $17,000,000 being the amount paid by the Government of the Federal People's Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid, in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Act.

(c) The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7 (b) of this Act—

(1) to make payments in full of the principal of awards of $1,000 or less, certified pursuant to section 5 of this Act;

(2) to make payments of $1,000 on the principal of each award of more than $1,000 in principal amount, certified pursuant to section 5 of this Act;

(3) to make additional payments of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than $1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund to the Government of the Federal People's Republic of Yugoslavia to the extent required

under article 1 (c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other official, or department, agency, or establishment of the United States.

SEC. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Commission to carry out its functions under this Act.

Approved March 10, 1950.

SECTION 10, ADMINISTRATIVE PROCEDURE ACT OF 1946, 60 STAT. 237 et seq., 5 U.S.C. 1001 et seq.

SEC. 10. (5 U.S.C. 1009) Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion.—(a) Right of Review.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and Venue of Action.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs or prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) Reviewable Acts.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) Interim Relief.—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) Scope of Review.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory

jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of §§ 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

Office - Supreme Court, U.S.
FILED
AUG 8 1957
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 352

LISE HAAS, *Petitioner*

v.

ROBERT B. ANDERSON, Secretary of the Treasury, and WHITNEY H. GILLILLAND, PEARL CARTER PACE and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, *Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No.

LISE HAAS, *Petitioner*

v.

ROBERT B. ANDERSON, Secretary of the Treasury, and WHITNEY H. GILLILLAND, PEARL CARTER PACE and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, *Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on May 16, 1957.

### OPINIONS BELOW

No opinion was filed in the District Court. The opinion of the Court of Appeals (App. pp. 1a-4a, infra) is not yet officially reported; it is printed as an appendix to this petition. The Proposed Decision and the

Final Decision of the Foreign Claims Settlement Commission are printed at pages 49-55 and 55-61, respectively, of the Joint Appendix.[1]

## JURISDICTION

The judgment of the Court of Appeals was entered on May 16, 1957 (App. p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Is the release by the United States of a private claim against a foreign country in the course of a lump sum settlement of international claims a taking of private property for public use within the meaning of the Fifth Amendment to the Constitution of the United States?

2. Where a claimant against a foreign country has requested the United States to espouse her claim, and the United States had made her claim a matter which was considered and released in arriving at a settlement whereby that foreign country provided a lump sum to cover American claims against it, and the claimant subsequently files a claim against the fund for a pro rata participation therein, does she have a "just compensation" right under the Fifth Amendment to participate in the fund?

3. Are the nonreviewability provisions of section 4(h) of the International Claims Settlement Act of 1949 applicable to a decision of the Foreign Claims Settlement Commission which if erroneous effectively deprives the claimant of a constitutional right to just compensation? If construed to preclude judicial re-

[1] The letters "J. A." as used throughout refer to the Joint Appendix as printed in the court below.

view, are those provisions in conflict with Article III and with the "due process" and "just compensation" provisions of the Fifth Amendment to the Constitution?

4. Do the nonreviewability provisions of the International Claims Settlement Act preclude the courts from reviewing the failure of the Foreign Claims Settlement Commission to obey mandates laid down in (a) the executive agreement which the Commission is administering and (b) the Act itself, which establishes the Commission and gives it authority to act?

5. Where the negotiators of an executive agreement regarding claims specifically intended that a particular claim should be eligible, even though it is not eligible under the general provisions of the agreement, and the statute creating the adjudicating agency provides that the agency shall apply the provisions of the claims agreement and of international law, justice and equity, is a decision of the administrative agency that the claim is ineligible reviewable by the courts as being beyond the jurisdiction of the agency, despite the nonreviewability provisions of the International Claims Settlement Act?

## CONSTITUTIONAL PROVISION, EXECUTIVE AGREEMENT, AND STATUTES INVOLVED

Constitution of the United States, Amendment V: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Yugoslav Claims Agreement of 1948, 62 Stat. 2658 et seq., T.I.A.S. No. 1803, is printed at pages 9-17 of the Joint Appendix. A letter in the form of a release from the Secretary of State of the United States

addressed to the Ambassador of Yugoslavia, delivered concurrently with the Yugoslav Claims Agreement and asserted by petitioner to be a part of the Agreement or to be a side agreement to the basic Agreement, has no official citation but is printed at pages 36-40 of the Joint Appendix.

The International Claims Settlement Act of 1949, 64 Stat. 12, 22 U.S.C. 1621 et seq., is printed at pages 75-86 of the Joint Appendix. Section 4(h) of that Act, 22 U.S.C. 1623(h), provides as follows: "The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency or establishment of the United States or by any court by mandamus or otherwise."

Section 4(a) of that statute provides: "In the decisions of claims under this Act, the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity."

## STATEMENT OF THE CASE

On July 19, 1948 the United States entered into an executive agreement with the government of Yugoslavia, known as the Yugoslav Claims Agreement of 1948 (62 Stat. 2658), under which Yugoslavia agreed to pay to the United States the sum of $17,000,000 in "full settlement and discharge" of American claims against Yugoslavia for the nationalization or other taking of property which, at the time of taking, was owned directly or indirectly by an American national. The fund was to be distributed in accordance with methods to be adopted by the United States, and the

Foreign Claims Settlement Commission of the United States was ultimately established to adjudicate claims against the Fund.

Petitioner filed a claim against the Fund. That claim was denied by the Commission (J.A. 49-61) solely upon the ground that she was not a national of the United States at the time of the nationalization of the property involved. She then filed a complaint in the District Court (J.A. 1-8) against the Commissioners seeking to set aside the Commission's decision and to have her claim declared to be eligible for compensation from the Fund. The Secretary of the Treasury (originally George M. Humphrey; now, by substitution, Robert B. Anderson. R. 96-a.), who must ultimately disburse the funds, was also made a defendant. The District Court dismissed the complaint for lack of jurisdiction over the subject matter (J.A. 73-4) on January 29, 1957, and the Court of Appeals affirmed that dismissal[2] on May 16, 1957 (App., pp. 1a-4a).

The complaint which was dismissed stated the following facts:

(1) In 1940 petitioner was an equal owner, together with three other persons, of the stock of an American corporation named European Textile Corporation, which owned all the stock of Etexco A. G., a Swiss corporation which in turn owned one-third of the stock of a Yugoslav corporation known as "Dugaresa". The four co-owners were all "non-Aryans" within the meaning of the Nazi "Aryan" laws then pending application in Yugoslavia, and to avoid confiscation of the Dugaresa interests under those laws, it became neces-

[2] The opinion of the Court of Appeals (App., p. 2a) erroneously states that the Government's "motion for summary judgment" was granted below.

sary to eliminate one corporation, and to have the remaining stock held by an "Aryan". The four co-owners therefore eliminated the American corporation and transferred the Etexco shares to one Edwin A. Binder, an American citizen and an "Aryan", under an agreement whereby he would hold the stock and exercise all shareholder powers for the equal benefit of the four transferors. Binder served under this agreement and held record title to the Etexco stock from 1940 to 1950. The Dugaresa properties were nationalized by Yugoslavia on December 20, 1945, at which time Binder and the three co-owners other than petitioner were all citizens of the United States (Pars. 6-8, J.A. 3-4). (Petitioner did not become a citizen until 1952.)

(2) All the facts stated above, and particularly the noncitizenship of petitioner at the time of nationalization, were stated to the Department of State many times and in great detail during 1946, 1947 and 1948 by numerous documents filed with the Department. Those facts were known to the Department and to the negotiators of the Yugoslav Claims Agreement. The negotiators intended in the Agreement to provide for settlement of and compensation for the full Dugaresa claim of Binder and the four co-owners, including the interest of petitioner; the claim of petitioner, who was known to be a non-national of the United States, was intended to be a compensable claim against the Fund (Pars. 8-9, J. A. 4).

(3) On the same day that the Agreement was executed, the United States gave Yugoslavia a release in the form of a letter (J. A. 36-40) in which it was confirmed that certain itemized claims "were considered" by the negotiators "during the course of the negotiations leading up to the execution of" the Agreement and that it was "deemed and understood by the Govern-

ment of the United States that the *obligations* of the Government of the Federal People's Republic of Yugoslavia to such persons with respect to such property . . . at least to the extent indicated . . . *have been and are forever* fully settled and discharged by and by reason of the aforesaid agreement". The Binder claim, including the full interest of petitioner, was specifically set forth as one of these claims (Par. 10, J. A. 4, emphasis added).

(4) Subsequently Congress enacted the International Claims Settlement Act of 1949, 22 U.S.C. 1621 et seq., to provide for distribution of the $17,000,000 Fund. That legislation was proposed, sponsored, and handled in passage by the Department of State. While the bill was pending, counsel for petitioner raised with the Department (J. A. 41-44) the possibility that despite the facts stated above, the administrative agency created by the statute might refuse to recognize the Binder-Haas claim on the ground that petitioner was not a United States citizen at the time of the nationalization. Counsel for petitioner suggested an amendment to the bill which would specifically protect petitioner. The State Department, however, stated in reply (J. A. 46-47) that "it would not appear to be necessary to modify the bill," that (J. A. 45) "Mrs. Haas' claim through Mr. Binder was considered . . . at the time of the Agreement", and that a certified copy of a memorandum which it enclosed, set forth the "intent of the negotiators." The enclosed memorandum (J. A. 46), prepared by the chief American negotiator, stated that it was the intent of the negotiators that "the legal title resting in Mr. Binder should be recognized" and that "the claim of Mr. Binder, in its entirety, should be considered as a U. S. claim" even though the negotiators knew that Mrs. Haas, one of the four beneficiaries of the Binder claim, was not a United States

national at the time of confiscation. In reliance upon this assurance, petitioner refrained from pressing an amendment and so notified the Senate and House committees handling the bill, in a letter (J. A. 47-48) setting forth the above facts (Par. 11, J. A. 4-5).

(5) After passage of the International Claims Settlement Act, Binder and the four transferors filed joint and several claims relating to the Etexco interest in Dugaresa. On November 26, 1954 the Commission issued a Proposed Decision (J. A. 49-55) in which the claims of the three beneficial owners other than petitioner were allowed and identical awards (in the amount sought in the complaint) were made to each of the three; but the claim of petitioner, identical in all respects except for citizenship, was disallowed solely because she was not an American citizen at the time of the nationalization of Dugaresa. The Commission excluded Binder completely, on the ground that he was not the beneficial owner and thus not entitled to an award in his own name. The Proposed Decision made no reference to the two State Department letters, the chief negotiator's memorandum, or the letter-release. Upon receipt of the Proposed Decision, petitioner requested a "hearing" which, under the Commission's procedure, consisted of the filing of objections and a brief and an an opportunity for oral argument, held on December 14. On that same day the Department of State filed a letter with the Commission (J. A. 61-2), stating that while the matter of adjudication was solely one for the Commission, "the Department requests that in its deliberations on the claim the Commission give appropriate consideration to the statements made at various times by [three different Department representatives] with respect to this claim". Those statements, which included the chief negotiator's memorandum (J. A. 46) and the two Department letters

(J. A., 45, 46-7) referred to above, were interpretations of the Agreement as including petitioner's claim within the scope of the Agreement despite her noncitizenship. The Commission, however, in its Final Decision (J. A. 55-61), adhered to its Proposed Decision, again without reference to the two State Department letters or the chief negotiator's memorandum and with only brief reference to the letter-release (Pars. 12-14, J. A. 5-6).

The Court of Appeals, in affirming the lower court's dismissal of the complaint, held that the Commission's decision "is not—under the circumstances—one that we are permitted to review under Section 4(h) of the International Claims Settlement Act of 1949, as interpreted in *de Vegvar*". (App. p. 2a, infra) The reference is to the Court's own decision in *de Vegvar* v. *Gillilland*, 228 F.2d 640, cert. denied, 350 U.S. 994. The Court also held that whether petitioner's claim was or was not released by the United States was "something we need not undertake to decide, as our disposition of the case would not in any event turn on the point" (App. p. 3a, infra). The Court concluded its discussion of the problem arising from release of the claim by saying: "In any event, it does not follow that this court is empowered to set aside the Commission's adverse determination" (App. p. 4a).

## REASONS FOR GRANTING THE WRIT

The issue in this case is one of reviewability. That issue turns on important questions of constitutional law, administrative law and rights of private persons under international agreements, which have never been determined by this Court. These questions are of vital interest because they involve the initial determinations of the Foreign Claims Settlement Commission, an administrative agency recently established to be a permanent agency for the settlement of foreign claims of

United States nationals. They also involve the extent and effectiveness of a nonreviewability provision in the enabling statute which has been interpreted in the lower courts to preclude judicial review even where the Commission violates the mandate of the applicable international agreement and the principles of adjudication laid down in the enabling statute itself. The reviewability question is critical to petitioner's rights since the Yugoslav Claims Fund, here involved, is the only source of funds from which her claim can be paid; once that Fund is distributed, petitioner's case is moot. If she cannot recover from that source, she cannot recover at all, and her rights can never be vindicated.

There can be no conflict of decisions of courts of appeals. There is of course no statutory provision for review; all actions would therefore have to be brought in the District of Columbia, the official residence of the members of the Foreign Claims Settlement Commission and the Secretary of the Treasury. Review, if it is to be granted, must therefore be granted in this case or a similar case coming from the Court of Appeals for the District of Columbia Circuit.

This case arises as a consequence of (1) the release by the United States of Yugoslavia's obligations to petitioner, and (2) the decision of the Foreign Claims Settlement Commission denying petitioner's claim to participate in the Yugoslav Claims Fund solely because of noncitizenship at the time of the loss.

## I

### Review Because of the Constitutional Issues

Section 4(h) of the International Claims Settlement Act does not (and could not) prohibit judicial review here because of the constitutional issues involved. The questions leading to the constitutional problems of this

case are these: Is the release by the United States of a private claim against a foreign country, in the course of an executive agreement with that country, a taking of private property for public use within the meaning of the Fifth Amendment? Where a lump sum is received from the foreign country in exchange for the release of all private claims against it, can the "just compensation" right of the released claimant attach to that Fund? Can the Congress preclude vindication of the constitutional right to just compensation? We proceed to take up those questions in the context of this case.

It is well settled that a claim against a foreign country is property. This Court so held in *Williams* v. *Heard*, 140 U.S. 529, and that proposition has never been questioned. Whether the release by the United States of such a claim is a Fifth Amendment "taking" has been squarely considered, so far as we know, in only two cases, both in the Court of Claims and both in the 19th century; it has never been decided by this Court and appears not to have decided by any court during the present century, though the question is—as we demonstrate later—of growing and even urgent importance. The two decisions of the Court of Claims are *Meade* v. *United States*, 2 C. Cls. 224, aff'd 76 U.S. 691, and *Gray* v. *United States*, 21 C. Cls. 340.

In both *Meade* and *Gray*, the Court of Claims held squarely that this country's release, by treaty, of a private individual's claim against a foreign country was "such an appropriation of private property to public use as comes within . . . the provision of the Constitution" and "must be paid for in the same manner" as any other property covered by the Fifth Amendment (*Meade*, 2 C. Cls. at 275). The Court reaffirmed that holding in *Gray*, saying that while the United States or any government had the right to release private

claims, if that seemed beneficial to the country, the person "whose property is thus sacrificed for the safety and welfare of his country has his claim against that country; he has a right to compensation" (21 C. Cls. at 393) under the Fifth Amendment.

The principle thus enunciated by the Court of Claims was later characterized by it as "well established law", *United States* v. *La Abra Silver Mining Co.*, 29 C. Cls. 432, 511, and it appears to have been accepted by the State Department. Letter of Secretary of State, May 10, 1909, 27 Op. Att'y Gen. 331. The problem has not been the subject of judicial cognizance since the *Meade* and *Gray* cases, and we had not thought the Court of Claims' proposition was in question[3] until the Government in the court below, relying upon the decisions of this Court in *Meade* v. *United States*, supra, and *Blagge* v. *Balch*, 162 U.S. 439, vigorously denied that the release of petitioner's claim gives rise to any rights under the Fifth Amendment. As to the *Meade* case, the Government contended that this Court held that Meade's property was not "taken" and reversed the contrary finding of the Court of Claims. Certainly this Court's opinion does not say that, and the proper interpretation of the decision seems to be that this Court did not reach the constitutional question because Meade, having consented to the compromise of his claim, was relegated to his pro rata share in the distribution of the $5,000,000 fund and could not then assert his rights generally against the United States, as he had attempted to do in that case; but it must be conceded

[3] Nor did a recent commentator, writing just before the instant case arose. See Ely, *A Hidden Hole in the Fifth Amendment: Treaty Power Versus Property Rights: A Substitute for the Bricker Amendment*, 59 Dickinson Law Review 299 (1955).

that this Court's opinion is not clear and that there is substantial doubt as to the meaning of its decision. The decision in *Blagge* v. *Balch*, supra, has the effect of further confusing the problem. This Court was there faced with the problem of interpreting the term "next of kin" in a statute appropriating money to pay the French Spoliation claims involved in the *Gray* case. In the course of its opinion, the Court observed (162 U.S. at 457) that the "payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace, and not of right." On the basis of this statement, the Government argued below that this Court overruled the decision of the Court of Claims in the *Gray* case and held that the release of a private claim against a foreign country does not give rise to a right of just compensation under the Fifth Amendment. There was no such issue in that case, and petitioner does not read *Blagge* v. *Balch* as being more than a determination by this Court that one group of relatives, rather than another, was intended by Congress; but again, the statement quoted above may honestly be thought to cut across the clear holding of the Court of Claims.

The effect of this Court's decisions in *Meade* and in *Blagge* v. *Balch* has been to cast doubt upon, without either confirming or reversing, the constitutional principle enunciated by the Court of Claims, a principle accepted as late as 1909 by Secretary of State Wickersham when he cited the *Meade* and *Gray* cases in the Court of Claims as authority for the proposition that "when private property is taken by treaty it must be compensated for." Letter of Secretary of State, May 10, 1909, 27 Op. Att'y Gen. 331. *Blagge* v. *Balch* and *Meade* caused one of our leading commentators on international law to observe that "[a] claim may be

renounced or surrendered for reasons of public policy, and the government escape legal liability, . . . whatever the equitable considerations in favor of just compensation to an individual whose private claim is relinquished for a public advantage. . . . " Borchard, *Diplomatic Protection of Citizens Abroad* (1915), p. 363. The court below, though its opinion is cryptic, cited this Court's decision in *Meade* apparently in some such connection. (App. p. 4a, infra). In order to resolve the confusion incident to this Court's decisions in *Meade* v. *United States,* supra, and *Blagge* v. *Balch,* supra, and to resolve a question of obvious importance affecting the Government in the conduct of its foreign relations and thousands of persons with present or prospective claims against foreign countries, this Court should grant certiorari to consider whether the release of the obligations of Yugoslavia to petitioner was a compensable "taking."

The magnitude of the issue, the number of persons affected, and the amount of money involved, although incalculable, assumes some perspective in the light of experience under prior claims agreements. The United States released individual claims not only for Spanish and French Spoliations and Yugoslav nationalization, but also, among others, claims arising out of the Spanish-American War, claims against Japan incident to World War II, and claims to reparations for property allowed to Russia under the Potsdam Agreement. The total of French Spoliation claims allowed by the Court of Claims amounted to $7,141,067.79;[4] the total of Spanish Spoliation claims allowed was $5,454,545.13;[5] and the Foreign Claims Settlement Commis-

[4] Letter from the War Claims Commission, House Doc. No. 67, 83rd Cong., p. 68.

[5] Id., p. 74.

sion made awards amounting to $18,817,404.89 on 876 Yugoslav claims and denied 671 claims.[6] For the near future, the problem is of significance primarily in connection with claims against Poland, Czechoslovakia, Hungary, Bulgaria, and Rumania. As an indication of what may be involved, it is pertinent to observe that pursuant to P.L. 285, 84th Congress, 1,059 claims totaling $259,742,036 have been filed to participate in vested Rumanian assets of an estimated $25,000,000, 2,724 claims totaling $225,816,966 as against some $6,000,000 of vested Hungarian assets, and 416 claims totaling $25,455,927 as against Bulgarian assets of approximately $3,000,000.[7] Negotiations with Poland[8] and Czechoslovakia are now pending, and since the vested assets of Bulgaria, Hungary and Rumania appear to be inadequate, it may be expected that negotiations with these countries will be undertaken or (in the case of Rumania) resumed, all leading to lump sum settlements.

The just compensation implications of lump sum settlements may make it necessary to consider what are the rights of a claimant, whose claim has been released, in the fund received from the foreign country. The problem here, it should be noted, is rather different from the problem in connection with the reciprocal renunciation of claims involved in *Gray* v. *United States*, supra, in which no monies were received or

[6] Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors (G.P.O., 1955), p. 4.

[7] Fifth Semiannual Report of Foreign Claims Settlement Commission of the United States, pp. 3-4.

[8] Public Notice of Foreign Claims Settlement Commission, June 18, 1957.

made available. Here, petitioner requested the United States to espouse her claim and thereby consented to its compromise, as in *Meade* v. *United States*, supra. If the United States had merely released her claim outright, without more, her remedy under *Gray* would appear to be in an action against the United States in the Court of Claims under 28 U.S.C. § 1491. But where the United States in fact compromised her claim in accordance with the terms of her consent and obtained, in exchange for releasing Yugoslavia from its obligation to petitioner (among others), a fund in the distribution of which she was to participate, *and where petitioner by her subsequent action, demonstrated that she was satisfied to seek satisfaction from that fund,* her just compensation rights—whatever they might be under other circumstances—may now be limited to pro rata satisfaction from the fund. *Meade* v. *United States*, 76 U.S. 691. This Court should define the nature and extent of those rights. As we see it, petitioner's general just compensation right has been transmuted, by her own actions, to a right against the Fund. It is still a constitutional right to just compensation, which cannot be cut off, but its measure is an aliquot share of the Fund. The error of the Commission and of the courts below was that they permitted the right to be destroyed entirely.

The issue of rights stemming from an international agreement "or action thereunder" is not without contemplation by this Court. In *Z. & F. Assets Realization Corp.* v. *Hull*, 311 U.S. 470, this Court found "no occasion to consider the circumstances in which an international agreement, or action thereunder, may be deemed to vest rights in private persons, or the scope of such rights in particular cases." *Z. & F. Assets*

*Realization Corp.* v. *Hull*, supra, at 489. These questions in part at least are now ripe for consideration, and it is important that they be resolved by this Court.

In the light of the constitutional questions outlined above, it is clear that the nonreviewability provisions of section 4(h) are not applicable to this case, for two reasons: (1) the legislative history makes clear that Congress had no idea that constitutional rights might be involved and thus had no intention that section 4(h) should preclude judicial review where such rights are involved;[9] (2) this Court has consistently construed federal statutes to avoid the conclusion that Congress intended, by withdrawing the jurisdiction of the federal courts, to defeat claims of constitutional right.[10] E.g., *Yakus* v. *United States*, 321 U.S. 414. Thus section 4(h), contrary to the conclusion of the court below, is no barrier to judicial review under the circumstances of this case, especially where the effect of an erroneous Commission decision is to deprive petitioner, finally and irrevocably, of just compensation for the release of Yugoslavia's obligations to her.

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[9] Indeed, Congress affirmatively believed that no constitutional rights would be affected. See remarks of Congressman Ribicoff, 95 Cong. Rec. 8840.

[10] Obviously the Court has been careful to avoid precipitating the issue, which has not arisen in the present century (and may never have been decided by this Court), whether Congress can withdraw the jurisdiction of the federal courts to vindicate claims of constitutional right. The answer appears to be that Congress cannot do so, *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, but cf. *Ex Parte McCardle*, 74 U. S. (7 Wall.) 506. One of our leading authorities is uncertain as to the state of the law. Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts*, 66 Harv. L. Rev. 1362.

The court below evidently did hold that judicial review is unavailable even where the effect of an erroneous Commission decision is that petitioner's property is irremediably confiscated. In the unlikely event that this Court should agree with the Court of Appeals that section 4(h) is intended to be applicable here, there would be squarely raised not only the Article III constitutional question of withdrawal of the jurisdiction of the federal courts, touched on in the previous paragraph, but also whether as a matter of procedural due process under the Fifth Amendment petitioner is entitled to judicial review no matter what Congress may have intended. See *Estep* v. *United States*, 327 U.S. 114 at 120; *Ng Fung Ho* v. *White*, 259 U.S. 276. The question of when there exists a constitutional right to judicial review has never been definitely resolved by this Court, and there appear to be no lower federal court decisions. The Court of Appeals, although its decision by implication holds that petitioner has no procedural due process right to judicial review, completely ignored this and other problems inherent in holding section 4(h) applicable in this case.

## II

### Review to Enforce the Statute

Wholly aside from the constitutional aspects discussed above, and without regard to the release of petitioner's claim, this case involves the problem whether the nonreviewability provisions of section 4(h) of the International Claims Settlement Act can shield from judicial review a decision of the Commission which is contrary to the mandate of the negotiators and in excess of the authority granted to the

Commission by statute.[11] This question covers the whole range of the Commission's activities under that Act; it also extends to the Commission's activities under the War Claims Act of 1948, 50 U.S.C. 2001 et seq., section 11 of which contains identical nonreviewability provisions. Initially, therefore, it is appropriate to consider the nature and extent of the Commission's activities, at least under the International Claims Settlement Act, and the potential impact of the problem presented here.

The Act originally established in the Department of State the International Claims Commission with jurisdiction over claims included within the terms of the Yugoslav Claims Agreement or within the terms of similar agreements with other foreign governments. 22 U.S.C. 1623(a). The permanent character of the Commission was emphasized by the Senate Committee, S. Rep. 800, 81st Cong., p. 1. In the words of one commissioner: "The establishment of the International Claims Commission represented a major development in the field of international claims. Heretofore, the adjudication of such claims had usually been assigned to special mixed tribunals with limited

[11] The mandate here is found in the letter-release (J.A. 36-40) and the entire Agreement as interpreted by the chief negotiator's memorandum (J.A. 46) and the two State Department letters (J.A. 45, 46-7); it is a direction from the highest authorities, the drafters of the Agreement, that the interest of Lise Haas should "be considered as a U.S. claim" (J.A. 46) even though she was a noncitizen at the time of loss. The letter-release is either a part of the basic Yugoslav Claims Agreement or is a corollary agreement of equal dignity. The mandate is carried into the statute by the requirement of section 4(a) that the Commission must apply "the provisions of the applicable claims agreement". Section 4(a) also provides that the Commission shall apply "the applicable provisions of international law, justice, and equity."

jurisdiction to resolve claims of a specified category. The International Claims Commission was the first tribunal created as a purely domestic institution intended to be a permanent body having jurisdiction over claims of an international character." Clay, *Aspects of Settling Claims Under the Yugoslav Claims Agreement of 1948*, 43 Georgetown L. J. 582, 583. In 1954 the functions and jurisdiction of that Commission and of the War Claims Commission were transferred to the Foreign Claims Settlement Commission, a newly-established independent government agency, by Reorganization Plan No. 1 of 1954, 5 U.S.C. 133z-15. The President's message transmitting the Plan (19 F.R. 3985) again stressed the permanent and all-embracing nature of the new Commission.

In addition to the Hungarian, Rumanian and Bulgarian programs now being executed, as discussed supra, p. 15, a number of other programs are in the process of execution.[12] The Commission has completed adjudication of claims against Panama under the convention of October 11, 1950, wherein Panama agreed to pay the United States $400,000 in settlement of the so-called El Encanto claims. Claims aggregating $1,537,394.05 were filed, and 66 awards were made totaling $441,891.84. The Commission is in the process of adjudicating claims of American nationals against Italy arising out of the war and not provided for in the treaty of peace. A fund of $5,000,000 was received from Italy for this purpose pursuant to the terms of

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[12] All information in this paragraph is taken from the testimony of the chairman of the Commission before the House Committee on Interstate and Foreign Commerce, Hearings on Regulatory Agencies Under Jurisdiction of the Committee, pp. 223-234 (March 5, 1957).

the Lombardo Agreement of August 14, 1947. 2192 claims totalling $27,412,985 have been received. The Commission is also charged with the responsibility of processing certain pre-1933 claims against the Government and nationals of the Soviet Union. The fund available, derived from the so-called Litvinov Assignment, is approximately $9,000,000. 4013 claims have been filed totaling $4,126,383,100. Adjudication of Soviet claims is under way, and already at least one action is pending in District Court challenging the Commission's decision. *First National City Bank* v. *Gilliland*, C.A. 562-57, D.C. District of Columbia. In addition, several bills pending before Congress propose a claims program for American losses from the nationalization of properties in Czechoslovakia; there is the prospect of further lump sum settlements with respect to the nationalization of American-owned properties in Eastern Europe; and what should be by far the largest and most important program of all, the German situation (including (a) claims against Germany and (b) full or limited return of German assets), is the lively subject of numerous bills proposed both by the Administration and by individual members of Congress and seems certain to emerge as legislation in some form. The Administration proposal would provide a claims fund of $100,000,000. It seems probable that the Commission will be extremely active for the indefinite future.

In view of the permanent character of the Commission, the number of claimants and the amount of money involved in the present and executed programs, and the prospects for future activity, it is important that this Court interpret section 4(h) of the Act and determine to what extent decisions of the Foreign

Claims Settlement Commission are placed beyond the corrective powers of the federal courts. The establishment of the Commission represented an important development in the field of international claims insofar as it created a permanent domestic agency with jurisdiction of claims of an international character, and as a consequence it would be appropriate early in the life of the Commission to determine its relationship to the federal judiciary. See Coerper, *The Foreign Claims Settlement Commission and Judicial Review*, 50 Am. Jour. Int. Law 868 (1956). The court below intimated that it thought section 4(h) stripped it of power to set aside a Commission decision under any circumstances. That court's interpretation of the strength of section 4(h) has now been made even clearer in its subsequent decision in *American and European Agencies, Inc.* v. *Gillilland*, No. 13,447, decided June 27, 1957, in which it held that the mandate of this very statute that any claimant "shall be entitled . . . to a hearing" was of no avail to a claimant who did not receive a hearing, because (said the court) even that issue is made nonreviewable by section 4(h). The court concluded that "the statutory bar . . . precludes us" from compelling the Commission to give the hearing required by statute.

In the case at bar, the Commission ignored the mandates of both clauses of section 4(a) of the enabling Act—to apply "the provisions of the applicable claims agreement" and to apply "the principles of international law, justice, and equity". These are rules of decision which the Congress intended the Commission to follow *before* the nonviewability provisions of section 4(h) should come into play. Congress could not have intended that one of its statutory prescriptions,

section 4(h), was to cut across and to eliminate another; the statutory provisions are to be read together in harmony. The only Commission action entitled to the nonviewability provision is one which follows the rules of decision. Here, the Commission disregarded the specific agreement concerning petitioner's claim and disregarded the settled principles of international law that a state is bound to carry out in good faith the obligation which it has assumed (see Art. 20, Harvard Draft Convention, 20 Am. Jour. Int. Law (Supp. II, 1935)); that an international agreement possesses the same essential qualities as private contracts between private individuals; and that the intent of the parties is of controlling significance in contractual international agreements. McNair, *The Law of Treaties* (1938) p. 185; Brierly, *Law of Nations* (2d Ed., 1935) p. 199.

This Court has in many cases noted the essential difference between (1) the traditional power of the federal courts to determine whether an administrative body has exceeded its statutory authority and (2) review of its decisions on question of law and fact, e.g. *Stark* v. *Wickard*, 321 U.S. 288, dissenting opinion of Justice Brandeis in *Crowell* v. *Benson*, 285 U.S. 22, 29, and under statutes which in varying language appear to preclude judicial review, it has repeatedly held that judicial review is available in connection with jurisdictional matters. E.g. *United States* v. *California Eastern Line*, 348 U.S. 351; *United States* v. *Williams*, 278 U.S. 255; *Reynolds* v. *United States*, 292 U.S. 443. Numerous other decisions of the Court, although upholding administrative action in the particular case, have also emphasized the traditional judicial power to keep administrative agencies within their jurisdiction; e.g. *Board of Governors* v. *Agnew*,

329 U.S. 441, 444, *Stark* v. *Wickard*, supra at 309-10, and in *Social Security Board* v. *Nierotko*, 327 U.S. 358, it was stated that (p. 369): "An agency may not finally decide the limits of its statutory power. That is a judicial function."

The decision of the Court of Appeals is not only out of harmony with the disposition of this Court, in connection with strictly domestic agencies, to permit review of jurisdictional questions; it is inconsistent with available precedent in international law and with the decision of this Court in *Z. & F. Assets Realization Corp.* v. *Hull*, 311 U.S. 470. The Permanent Court of Arbitration early determined that decisions of international tribunals established pursuant to claims conventions which declare their decisions to be final and conclusive may be attacked on the ground that the tribunal exceeded its jurisdiction. *Orinoco Steamship Co. Case*, Scott, Hague Court Reports (1916), p. 226. In the only decision of an American court to deal with review of decisions of claims commissions having jurisdiction over international claims, this Court, in *Z. & F. Assets Realization Corp.* v. *Hull*, supra, although upholding the Secretary of State's certification of an award of a Mixed Claims Commission for payment out of a special fund in the Treasury, first reviewed to the extent necessary to determine whether there was a "basis for concluding that the Secretary of State in certifying the awards did not act after due deliberation or fail to express his considerate judgment, as we think the statute contemplated." 311 U.S. at 489. The clear implication of the decision, as appears more fully from the concurring opinion, is that had the Secretary of State not acted with "due deliberation" and "considerate judgment" the Court would have reversed his

certification. If a limited measure of judicial review is available of decisions of a mixed claims commission, it would seem a fortiori that judicial review is available to determine whether the Foreign Claims Settlement Commission—a domestic agency—has acted within the limits of the authority granted it by statute and by the international agreements it administers.

The decision of the Court of Appeals in this case is also clearly inconsistent with the philosophy underlying the judicial review provisions of the Administive Procedure Act, as reflected in many recent decisions of this Court. E.g. *Brownell* v. *Tom We Shung*, 352 U.S. 180; *Shaughnessy* v. *Pedreiro*, 349 U.S. 48. As was said by the committees of the House and Senate in connection with the review provisions of the Administrative Procedure Act:

> "It has never been the policy of Congress to prevent the administration of its own statutes from being judicially confined to the scope of authority granted or to the objectives specified. Its policy could not be otherwise, for in such a case statutes would in effect be blank checks drawn to the credit of some administrative officer or board." Administrative Procedure Act, Legislative History, Sen. Doc. 248, 79th Cong., p. 212 (Senate Judiciary Committee); p. 275 (House Judiciary Committee).

## III

### The Issue of Government Morality

The case involves a fundamental issue of Government morality. The United States included petitioner's claim for bargaining purposes with Yugoslavia and released Yugoslavia's obligations to petitioner as part of the quid pro quo for the receipt of the $17,000,000

Fund. At the crucial point of Congressional consideration of the implementing legislation, the sponsoring agency dissuaded petitioner from seeking clarifying legislation by representing to her that she was already covered by the Agreement, and produced a "certified" memorandum of the chief negotiator to that effect. Years later, when petitioner had lost her opportunity to remedy any possible doubt, the Government was not willing to pay out the monies it had represented to be attributable to her property interest, now destroyed. Cf. *Caldera Cases*, 15 C. Cls. 546, 594:

> "it is not for any judicial tribunal to assume to reverse that decision of the national Executive [that certain claims against China were valid], and so put our government in the unjustifiable and unenviable position before the world of having demanded money from China to pay certain claimants, and then denying them indemnity out of that money on the ground that, on principles of international law, they never had any claim whatever against China.

## CONCLUSION

The Court of Appeals hardly touched upon any of the perplexing issues in this case. It held simply that: "The decision of the Commission denying Mrs. Haas' claim is not—under the circumstances—one that we are permitted to review under Section 4(h) of the International Claims Settlement Act. . . ." By necessary implication, it also held that the statute as so interpreted did not violate procedural due process and either that petitioner had no constitutional right to participate in the Fund or, if she had, that she was not entitled under Article III of the Constitution to access to a federal court to vindicate her constitutional right. It necessarily held also that it could not compel ad-

herence to a mandate, laid down by the Agreement and its implementing statute, that petitioner's claim should be eligible as a United States claim.

The issues raised herein involve basic and important questions of constitutional and administrative law. The Court of Appeals handled them inadequately and its decision that judicial review is unavailable is clearly erroneous. We ask that a writ of certiorari be granted.

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FISCHER, WILLIS AND PANZER
*Of Counsel*

## APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13,728

LISE HAAS, APPELLANT

v.

GEORGE M. HUMPHREY, SECRETARY OF THE TREASURY, WHITNEY GILLILLAND, PEARL CARTER PACE, AND HENRY J. CLAY, CONSTITUTING THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, APPELLEES

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Appeal from the United States District Court for the District of Columbia

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Decided May 16, 1957

*Mr. Irving R. M. Panzer,* with whom *Mr. Laurence S. Fordham* was on the brief, for appellant.

*Mr. B. Jenkins Middleton,* Attorney, Department of Justice, with whom *Assistant Attorney General Doub, Messrs. Oliver Gasch,* United States Attorney, and *Samuel D. Slade,* Attorney, Department of Justice, were on the brief, for appellees.

Before EDGERTON, Chief Judge, and WILBUR K. MILLER and WASHINGTON, Circuit Judges.

WASHINGTON, *Circuit Judge:* Plaintiff-appellant brought suit in the United States District Court seeking a judgment that a decision of the Foreign Claims Settlement Commission "be declared to be contrary to law and null and void, and that plaintiff's claim be declared to be eligible for compensation from the Yugoslav Claims Fund." The case is thus of the same general sort as

was presented in *de Vegvar* v. *Gilliland*, 97 U.S. App. D.C. 126, 228 F. 2d 640 (1955), cert. denied, 350 U.S. 994 (1956). The District Court granted the Government's motion for summary judgment, on the authority of that case, and this appeal followed.

It appears that the plaintiff was not a national of the United States at the time the property in question was taken by the Government of Yugoslavia, and that the decision of the Commission denying her claim was based on that ground.[1] The plaintiff admits non-citizenship, but says that this should not be a "disqualifying obstacle" in this case for a number of stated reasons, of which the principal ones are that the United States Government undertook to release her claim against the Government of Yugoslavia; that this was a taking of her property for which the Constitution requires compensation; and that officials of the State Department, prior to the signing of the treaty, had taken the position that she should be included among the beneficial owners of a claim which the State Department had undertaken to support and to negotiate with the Yugsolav Government.

The decision of the Commission denying Mrs. Haas' claim is not—under the circumstances—one that we are permitted to review under Section 4(h) of the International Claims Settlement Act of 1949,[2] as interpreted in *de Vegvar*. We may point out, however, that the Commission seems to have observed procedural due process in the consideration of her claim, and that its conclusion

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[1] The Commission's final decision says in part:

> "The Commission, therefore, concludes that the claim of Lise Haas was not a claim of a national of the United States at the time of the taking of [the property] and was not settled by the Agreement of July 19, 1948, or within the jurisdiction of this Commission."

[2] 64 STAT. 13-18, 22 U.S.C. §§ 1622-27 (1952).

that she was barred by the terms of the treaty and of the Act from participation in the Fund because of her non-citizenship can hardly be said to be based on an unreasonable construction of the law. Appellant urges, contrary to the Commission's conclusion, that her claim against Yugoslavia was in fact released by the United States. But that is something we need not undertake to decide, as our disposition of the case would not in any event turn on the point. The Government cites to us Section 3 of the underlying treaty, and interprets it to mean that inasmuch as Mrs. Haas was not entitled to the treaty's benefits her claim against Yugoslavia was not released and remains alive.[3] If that is so, there has been no taking whatever of Mrs. Haas' property. If that is

[3] The appellees' brief says:

"The agreement [the Yugoslav Claims Agreement of 1948, 62 Stat. 2658 *et seq.*] does indeed provide for the payment by Yugoslavia of $17,000,000 'in full *settlement and discharge* of all claims of nationals of the United States against the Government of Yugoslavia' (Article 1 (a) . . .). It is perfectly obvious, however, that this over-all 'settlement and discharge' of claims of nationals did not effect the settlement or release of any *individual* claim until such time as that claim was 'determined to be valid' by an 'adjudication made by the agency established or otherwise designated by the Government of the United States to *adjudicate* claims *settled* under [the] Agreement * * *.' (Article 1 (c) . . ., emphasis added). This is particularly apparent with reference to claims in which nationality was a factor, since Article 3 specifically provides that 'the claims of nationals of the United States to which reference is made in Article 1 of this Agreement *do not include* claims of individual nationals of the United States *who did not possess such nationality at the time of the nationalization or other taking, which claims shall be subject to compensation by the Government of Yugoslavia* * * *' (. . . emphasis added). This provision demonstrates not only that *no* individual claims were unconditionally settled, discharged or released on July 19, 1948, but that the obligation of Yugoslavia to appellant in particular was not released, since she did not acquire United States nationality until 1952."

not so, it does not follow that the taking—if any there was—can or should be compensable from the Yugoslav Claims Fund, unless and until there has been an award by the Commission. See *Meade* v. *United States*, 76 U.S. (9 Wall.) 691 (1869). In any event, it does not follow that this court is empowered to set aside the Commission's adverse determination. See *de Vegvar, supra*, and *Dayton* v. *Gillilland*, —— U.S. App. D.C. ——, —— F. 2d —— (1957).

The judgment of the District Court will accordingly be

*Affirmed.*

WILBUR K. MILLER, *Circuit Judge*, concurring in the result: I dissented in *de Vegvar* v. *Gillilland*, 97 U. S. App. D. C. 126, 228 F. (2d) 640 (1955), because I thought it was incorrectly decided. It stands, however, as the decision of this court and for that reason I felt bound to concur in *Dayton* v. *Gillillard*, —— U.S. App. D. C. ——, —— F. (2d) —— (1957). For the same reason I reluctantly concur in the result here.

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No. 352

# In the Supreme Court of the United States

OCTOBER TERM, 1957

LISE HAAS, PETITIONER

*v.*

ROBERT B. ANDERSON, SECRETARY OF THE TREASURY; AND WHITNEY H. GILLILLAND, PEARL CARTER PACE AND HENRY J. CLAY, CONSTITUTING THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE RESPONDENTS IN OPPOSITION

J. LEE RANKIN,
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# In the Supreme Court of the United States

OCTOBER TERM, 1957

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE RESPONDENTS IN OPPOSITION

### OPINIONS BELOW

No opinion was filed by the District Court. The opinion of the Court of Appeals (R. 92–95), which is not yet reported, is set out as the appendix to the petition (Pet. 1a–4a).[1]

### JURISDICTION

The judgment of the Court of Appeals was entered on May 16, 1957 (R. 96). The petition for a writ of certiorari was filed on August 8, 1957. The jurisdic-

[1] References to the Record in this Court are designated "R. —"; references to the petition are designated "Pet. —".

tion of this Court is invoked under 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Whether, under the International Claims Settlement Act of 1949, the Foreign Claims Settlement Commission was finally to determine, without court review, claims to share in a fund posted by Yugoslavia pursuant to international agreement.

## EXECUTIVE AGREEMENT AND STATUTE INVOLVED

The provisions of the Yugoslav Claims Agreement of 1948, 62 Stat. 2658, *et seq.*, and of the International Claims Settlement Act of 1949, 64 Stat. 12, *et seq.*, 22 U. S. C. 1621–27, are printed in the Record at pp. 9–17 and 75–86, respectively.

## STATEMENT

1. The Yugoslav Claims Fund was created by the Yugoslav Claims Agreement of 1948 (R. 9–17). The background and provisions of this Agreement and of the International Claims Settlement Act of 1949, which provided the mechanism for the distribution of the Fund, have been set forth at pp. 3–7 of the Brief for the Respondents in Opposition in *Dayton* v. *Gilliland*, No. 129, this Term, now pending on petition for certiorari.[2] We therefore summarize only those portions of the Agreement and Act which are particularly pertinent to the present case, respectfully referring the Court to the cited pages of the *Dayton* brief for more complete details.

[2] See also Brief for the Respondents, in Opposition in *de Vegvar* v. *Gillilland*, No. 654, O. T. 1955, pp. 2–7, certiorari denied, 350 U. S. 994.

Under the Agreement, Yugoslavia paid to the United States Government $17,000,000 "in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property" occurring between September 1, 1939, and the date of the Agreement (Article 1 (a) and (b); R. 10). Article 3 (R. 11) specifically provided that the "claims of nationals of the United States to which reference is made in Article 1 of this Agreement do not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, which claims shall be subject to compensation by the Government of Yugoslavia, either by direct negotiations between that Government and the respective claimants or under compensation procedures prescribed by the Yugoslav law". The Agreement contemplated that an agency would be "established or otherwise designated by the Government of the United States to adjudicate claims settled under this Agreement * * *" (Article 1 (c)). The United States Government agreed to supply the Yugoslav Government with certified copies of formal submissions made by claimants to the adjudicative agency and corresponding awards, "[i]n the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement * * *" (Article 9 (b), R. 15). Article 8 provided that "[a]ny determinations with respect to the validity or amounts of individual claims

which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding" (R. 14). The balance, if any, of the $17,000,000 Fund remaining after adjudication and distribution was to be returned to the Government of Yugoslavia (Article 1 (c), R. 10).

The International Claims Settlement Act of 1949 established what is now the Foreign Claims Settlement Commission and gave it "jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims * * * of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948" or of any similar future agreement (Sec. 4 (a), R. 77). "Nationals of the United States" whose claims were subject to the Act were defined as including "(1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens" (Sec. 2 (c), R. 75). The decisions of the Commission were to "constitute a full and final disposition of the case in which the decision is rendered" (Sec. 4 (b), R. 77–78), and the "action of the Commission in allowing or denying any claim" was to "be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise" (Sec. 4 (h), R. 81).

Section 5 of the Act (R. 81) provided for the transmission to the foreign government concerned of copies

of claims submitted. Section 7 (f) (R. 84) declared that "nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government."

2. Petitioner, not an awardholder but one of the 678 claimants whose claims before the Commission were denied, instituted the instant action against the Secretary of the Treasury and the members of the Foreign Claims Settlement Commission in their official capacities. The complaint alleged (R. 1–8):

In 1945, the Yugoslav Government confiscated the properties of a Yugoslav corporation known as "Dugaresa" (Par. 6, R. 3). Prior to 1940, one-third of the shares of Dugaresa were owned by Etexco A. G., a Swiss corporation; Etexco, in turn, was wholly owned by European Textile Corporation, an American corporation; and the shares of European Textile Corporation were owned in equal amounts by petitioner and three other persons, Robert Anninger, Victor Anninger, and Ann A. Unger, all "non-Aryans" under the Nazi "Aryan" laws. In order to avoid confiscation of the Dugaresa interest under these laws, European Textile Corporation distributed the stock of Etexco to petitioner and her three co-owners, and they in turn transferred the shares to Edwin A. Binder, an "Aryan" and an American citizen. From 1940 to 1950, when Etexco was dissolved, Binder held the shares in his own name under an agreement specifying that he was to hold the shares and exercise all

powers as a shareholder for the equal benefit of the four transferors (Pars. 6, 7, R. 3).

At the time of the Yugoslav confiscation of Dugaresa in 1945, Binder, the two Anningers, and Mrs. Unger were all citizens of the United States; petitioner, however, was not, and she did not acquire United States citizenship until 1952 (Pars. 2, 8, R. 1, 4). Documents submitted to the Department of State in 1946, 1947, and 1948, including a formal claim for compensation based on the taking of Dugaresa, set forth the interests and citizenship status of Binder, Mrs. Unger, the Anningers, and petitioner (Par. 8, R. 4; see Exhs. 2 and 3, R. 17–36).

Paragraphs 9, 10, and 11 of the complaint consisted largely of petitioner's interpretations of documents attached to the complaint. Paragraph 9 stated that at the time of the negotiation of the Yugoslav Claims Agreement of 1948, the above facts were fully known to the negotiators, who were alleged to have intended to "provide for full settlement of, and full compensation for, the entire Dugaresa claim * * * which was to be considered a United States claim in its entirety." Petitioner's interest "was intended, in the Agreement and in separate documents constituting side agreements to the Agreement, to be a compensable claim" (Par. 9, R. 4). Contemporaneously with the signing of the Agreement, "the United States gave Yugoslavia a release of claims which were specifically considered by the negotiators and were deemed settled and discharged by the Agreement. Specifically enumerated as one of those claims was the claim of Binder, in-

cluding in full the interest of" petitioner (Par. 10, R. 4; see Exh. 4, R. 36–40).

Paragraph 11 of the complaint (R. 4–5) alleged that the Department of State thereafter "advised the Congress of the facts stated in paragraphs 9 and 10," and also advised counsel for petitioner that a proposed amendment to the bill (which became the International Claims Settlement Act of 1949), to make clear that her interest in Dugaresa was to be compensable, "was unnecessary in the light of the history of the negotiation of the Agreement as evidenced by memorandum" (see Exhs. 5–7, R. 41–47). Petitioner, relying upon this representation, refrained from pressing her proposed amendment and so informed the Senate and House committees (Par. 11, R. 5; see Exh. 8, R. 47–48).

The complaint goes on to allege that, following passage of the Act, Binder and the four transferors, jointly and severally, filed a claim with the Commission in the amount of $4,012,500 for the confiscation of their interests in Dugaresa (Par. 12, R. 5). In its Proposed Decision on this claim, the Commission denied that portion of the claim relating to petitioner, solely on the ground of her non-citizenship at the time of confiscation[3] (Par. 14, R. 6; see Exh. 9, R. 49–55).

[3] The Proposed Decision, noting that petitioner "was not a citizen of the United States when the claim was filed" (R. 50), concluded that her claim "was not a claim of a national of the United States at the time of the taking of Dugaresa and was not settled by the Agreement of July 19, 1948, or within the jurisdiction of this Commission" (R. 54). The Commission agreed that "the important point is to ascertain the real intention of the parties (to the Yugoslav Claims Agreement of 1948)"

The Department of State thereafter sent, it is alleged, a letter to the Commission requesting that appropriate consideration be given to statements of three different State Department representatives which were "interpretations of the Agreement as making the Binder-Haas claim eligible for compensation despite the non-citizenship of Haas at the time of confiscation" (Par. 14, R. 6; see Exh. 11, R. 61–62, and Exhs. 6, 6a and 7, R. 45–47). After hearing, the Commission issued its Final Decision on December 30, 1954, affirming the denial of the Binder and Haas claims[4] (Pars. 12, 13, R. 5–6; see Exh. 10, R. 55–61).

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(R. 52), and proceeded to deal with the contention, among others, that there was "a specific understanding by the negotiators * * *' that the 'Binder-Haas' claim was to be recognized as part of a claim asserted by Binder on behalf of all four beneficial owners" (R. 52). The Commission held that Binder was not within the class of eligible claimants since his relationship to the true owners of Etexco did not create a juridical person "organized under the laws of the United States, or a constituent state or other political entity thereof", within Article 2 (c) of the Agreement (R. 53). The Commission therefore viewed the claim "as one by the real or beneficial owners of the Etexco shares and not as a claim by Binder on his own behalf" (*ibid.*). The claims of both Binder and petitioner were accordingly denied, and awards in the amount of $178,125 each, plus interest, were made to the Anningers and Unger (R. 54–55).

[4] The Final Decision expressly adopted the Proposed Decision with the exception of an increase in the amount of the awards to the Anningers and Unger (R. 60–61). With respect to petitioner's argument that the Proposed Decision was contrary to the understanding of the negotiators that the Binder-Haas claim was to be covered by the Agreement, the Commission ruled that the letter of July 19, 1948, a "unilateral document", was neither an "agreement" nor evidence of any intention of the negotiators that the claims listed therein be allowed as adjudicated claims (R. 56–57). The Commission pointed to the "reservation to

The complaint alleged that the Final Decision was "erroneous and in conflict with applicable law" because it was "contrary to the Agreement", "contrary to side agreements to the Agreement", and "contrary to the Act"—all of which were alleged to have been intended to include petitioner's claim as eligible for compensation—and further because respondents were estopped to deny petitioner's eligibility (Par. 15, R. 6–7). Alleging that she was unable to obtain compensation from Yugoslavia for her claim "because the claim was settled and released by the United States and is therefore barred", and that she had no adequate remedy at law (Pars. 17–18, R. 7), petitioner demanded the following relief (R. 7–8):

(1) a judgment declaring the Final Decision "to be contrary to law and null and void, and

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this Commission of the free exercise of authority and discretion" contained in the opening proviso of the letter ("Without prejudice to the free exercise of such authority and discretion as may be vested in any agency that may be established or otherwise designated by the Government of the United States to adjudicate claims, * * *"), and also quoted statements of the Acting Legal Adviser of the Department of State before the House Committee on Foreign Affairs stressing that "those claims have in no way been adjudicated * * *" (R. 57). The Commission disposed of petitioner's contention that the Proposed Decision frustrated a congressional intention that her claim be allowed by noting that Congress "was well aware that it could do nothing to modify the Agreement which had already been entered into and was valid without Congressional approval" (R. 56–58). Binder's status was found to be that of a mere agent rather than of a "juridical person" (R. 59). Noting that the Act itself reserved to the Commission the sole responsibility for adjudication of claims, the Commission ruled that nothing in the negotiating history of the Agreement served as a "ground for departure from the traditional policy of our government with respect to the espousal of the claims of non-nationals" (R. 59–60).

that [petitioner's] claim be declared to be eligible for compensation from the Yugoslav Claims Fund";

(2) certification of petitioner's claim "by the Commission or by this Court" to the Secretary of the Treasury for payment in the same amount as the award made to the Anningers and to Unger; and

(3) restraint of the Secretary of the Treasury pending final determination of this action from making payments out of the Yugoslav Claims Fund which would reduce the Fund to an amount less than $228,396.46, the amount of petitioner's claim.

By amendment, petitioner added an allegation that she had "a right, under the Fifth Amendment to the Constitution of the United States, to share in the Yugoslav Claims Fund and for compensation for the settlement and release of her claim" (R. 69).

By its order of January 29, 1957, the District Court dismissed the complaint on the ground that it lacked jurisdiction of the subject matter,[5] relying in its oral ruling upon *de Vegvar* v. *Gillilland*, 228 F. 2d 640 (C. A. D. C.), certiorari denied, 350 U. S. 994 (R. 73–74). On appeal, petitioner again urged, as she had in the District Court, that her claim against Yugoslavia, unlike that of Mrs. de Vegvar, was specifically released by the negotiators of the Yugoslav Claims Agreement, thereby giving rise to a claim

[5] The Court of Appeals has corrected its erroneous statement that "The District Court granted the Government's motion for summary judgment * * *" (R. 93, Pet. 2a) to read "The District Court granted the Government's motion to dismiss the complaint * * *".

against the United States Government for just compensation which could not be cut off by the application to her claim of the nonreviewability provisions of Section 4 (h) of the International Claims Settlement Act without violating her constitutional rights. Respondents contended, *inter alia*, that this attempt to distinguish the *de Vegvar* case was without substance since the Commission had determined, contrary to petitioner's basic premise, that the claim had not in fact been released, a determination which was itself final and unreviewable under Section 4 (h).

In affirming the dismissal, the Court of Appeals apparently adopted the latter view. Noting that this case is "of the same general sort as was presented in *de Vegvar* v. *Gillilland*, * * *", the court held that "[t]he decision of the Commission denying Mrs. Haas' claim is not—under the circumstances—one that we are permitted to review under Section 4 (h) of the International Claims Settlement Act of 1949, as interpreted in *de Vegvar*" (Pet. 2a). The court pointed out that petitioner's argument that her claim had been released by the United States was "contrary to the Commission's conclusion", the correctness of which was irrelevant to the disposition of the case (Pet. 3a). The court specifically declined to decide whether such a release, if there were one, would constitute a "taking"; whether such a taking, if there were one, could or should be compensable from the Yugoslav Claims Fund, in the absence of an award by the Commission; and whether, in any event, the court would be "* * * empowered to set aside the Commission's adverse determination" (Pet. 3a–4a).

The court observed, however, that the Commission appeared to have accorded petitioner procedural due process, and that its conclusion that she was barred from participation in the Fund by her non-citizenship "can hardly be said to be based on an unreasonable construction of the law" (Pet. 2a–3a).

## ARGUMENT

Petitioner seeks review of the decision of the court below that Section 4 (h) of the International Claims Settlement Act precludes judicial review of the action of the Foreign Claims Settlement Commission in denying her claim against the Yugoslav Claims Fund. Since the purpose and scope of Section 4 (h) have previously been outlined in the Government's brief in opposition to the petition for certiorari in the *de Vegvar* case (O. T. 1955, No. 654), we respectfully refer the Court to that brief. Here, we will demonstrate that the reviewability of the Commission's denial of petitioner's claim is governed by the same rules as were found applicable in the *de Vegvar* and *Dayton* cases.[6]

1. Petitioner contends that her claim, unlike those of Mrs. deVegvar and Mr. Dayton, was unconditionally released by the United States government on July 19, 1948, by the execution of the Agreement and the transmittal of a contemporaneous letter from the Secretary of State to the Yugoslav Ambassador (Pet. 10–18). Starting from this premise, she argues that her claim

[6] *de Vegvar* v. *Gillilland*, 228 F. 2d 640 (C. A. D. C.), certiorari denied, 350 U. S. 994; *Dayton* v. *Gillilland*, 242 F. 2d 227 (C. A. D. C.), pending on petition for a writ of certiorari, No. 129, this Term.

was property (Pet. 11); that the purported release constituted a taking of property entitling her to just compensation under the Fifth Amendment (Pet. 11–14); and that such right was "transmuted * * * to a right against the [Yugoslav Claims] Fund" (Pet. 15–16). If all these issues were to be decided in her favor, says petitioner, it would then be necessary to interpret Section 4 (h) of the Act so as to permit judicial review (Pet. 17–18). Petitioner asks this Court to pass upon the validity of this chain of argument, in order that it may avoid the necessity for deciding even more subtle and complex constitutional issues which, she intimates, were decided *sub silentio* by the court below.[7]

There is no necessity, however, for reaching or deciding any constitutional issues whatsoever. The Court of Appeals properly disposed of the entire case in deciding the threshold question of its jurisdiction to re-examine the particular Commission determination that petitioner's claim had not in fact been released. The court did not find it necessary to decide

[7] Specifically, petitioner urges the Court to decide two constitutional issues which she concedes to be in doubt: (1) whether there was a compensable "taking" under the Fifth Amendment (Pet. 14), and (2) what rights, if any, are vested in claimants by international claims settlement agreements (Pet. 16). By reviewing and deciding these questions in her favor, says petitioner, the Court may avoid deciding (1) whether congressional failure either to confer jurisdiction to hear cases based upon the purported violation of a constitutional right or to waive sovereign immunity from suit in such cases precludes the vindication of those rights in federal courts (Pet. 17), and (2) whether the Due Process Clause of the Fifth Amendment can give rise, in itself, to a procedural right to judicial review of administrative action (Pet. 18).

whether Section 4 (h) would bar review in any and all circumstances. It was fully aware, contrary to petitioner's intimations (Pet. 18), of the constitutional issues which would be raised if that section were to be read as precluding judicial vindication of constitutional rights.* But it did not find those issues to be properly present in this case, specifically declining to pass upon any of the petitioner's contentions based upon the purported release (including the question of whether there had in fact been a release); it prefaced this refusal by pointing out that the Commission had decided that petitioner's claim had not been released by the United States (Pet. 3a). The court thereby accepted respondent's argument, previously outlined (*supra*, p. 11), that the Commission's determination—"final and binding" upon all parties under Article 8 of the Agreement (R. 14), and not subject to judicial review under the provisions of the Act—obviated the possibility of judicial consideration of the constitutional issues which petitioner says would be raised by the assumption that her

* In a case argued before the same panel on the same day as petitioner's appeal and decided June 27, 1957, Judge Washington, again speaking for himself and Chief Judge Edgerton, stated as follows (*American & European Agencies, Inc.* v. *Gilliland*, (C. A. D. C.), slip opinion, pp. 4–5):

"If the agency's [action] resulted in the denial of a constitutional right, the validity of a blanket nonreviewability clause would indeed pose a grave and difficult constitutional question. On the other hand, if the agency's [action] does not result in the denial of a constitutional right, there is no constitutional reason for seeking to narrow the scope of a nonreviewability statute."

claim had been released. This disposition of the case was clearly correct.

(*a*). First, this holding correctly interprets the Commission's statement "that the claim of Lise Haas * * * was not settled by the Agreement of July 19, 1948", as a ruling that the Agreement and the contemporaneous letter did not operate as an unconditional discharge of Yugoslavia's obligations to petitioner. Under the Agreement, made "in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia" (Article 1 (a), R. 10), claims "settled" and claims "discharged" were clearly one and the same. Consequently, a claim which was not "settled" was similarly not "discharged"—or "released", in petitioner's terminology.[9] Since petitioner relies upon the words "settled and discharged" (R. 37) in the letter of July 19, 1948 (R. 37–40) as effecting a release, the Commission's ruling that the claim "was not settled by the Agreement" was, as the court below held, a determination that the claim had not been released.[10]

(*b*). Second, the decision below correctly construes Section 4 (h) of the Act as precluding judicial review

[9] Black's Law Dictionary, 4th Ed. (1951), contains the following definition: "Discharge. To release, * * *".

[10] The Senate Report accompanying the bill which became the International Claims Settlement Act of 1949 noted (S. Rept. 800, 81st Cong., 1st Sess., p. 11; emphasis added):

"The Yugoslav claims agreement of 1948 is a settlement of a defined category of claims. In consideration of the payment of $17,000,000 the Yugoslav Government was discharged of obligation with respect to such claims. *Claims not settled were not discharged* and remain unsettled obligations of Yugoslavia."

of this determination by the Commission. That section makes "[t]he action of the Commission in allowing or denying any claim * * * final and conclusive on *all* questions of law and fact and not subject to review * * * by any court by mandamus or otherwise" (R. 81; emphasis added). Petitioner has suggested no reason why this provision should not apply to the determination in question, and there is none. This binding determination, unreviewable in the courts, is dispositive of petitioner's contentions. See the Briefs for the Respondents in Opposition in the *De Vegvar* and *Dayton* cases (*supra*, pp. 2, 12).[11]

2. Even if the Court of Appeals had assumed jurisdiction to reconsider the question of whether a release had been effected, it would have been necessary to af-

[11] This Court must, of course, assume that Yugoslavia will consider itself bound, under Article 8 of the Agreement, by the determination that its obligations to petitioner were not released. Petitioner has nowhere suggested that Yugoslavia has rejected this determination. The relationship between Article 8 of the Agreement and Section 4 (h) of the Act and the binding force of those provisions was explained as follows by the State Department spokesman during hearings on the bill (Hearings before the House Committee on Foreign Affairs on H. R. 4406, 81st Cong., 1st Sess., p. 22):

"* * * A decision made by the Commission shall be a full and final disposition of the case. That is consistent with the terms of the Yugoslav Agreement under which Yugoslavia agreed that any determination of the Commission would also be final and binding upon the Yugoslav Government.

Mrs. DOUGLAS. In other words, once the Commission has given a decision, there is no appeal. That is the end of the matter?

Mr. HERMAN. That is right.

Mrs. DOUGLAS. Neither the State Department nor the Congress nor anybody else can set aside a decision of the Commission?

Mr. HERMAN. That is precisely so."

firm the Commission's determination. Passing over the question of whether the United States Government could in any event effect the release of a claim of an Austrian citizen (R. 41) against the Yugoslav Government, it is manifest that petitioner's contention that her claim was released flies in the face of the Agreement. The Agreement, although it effected the over-all "settlement and discharge" of claims of American nationals against Yugoslavia (Article 1 (a)), did not effect the settlement or release of any *individual* claim until the claim was "determined to be valid" by an "adjudication made by the agency established or otherwise designated by the Government of the United States to *adjudicate* claims *settled* under [the] Agreement * * *" (Article 1 (c), R. 10; emphasis added). This is particularly true with reference to claims such as petitioner's in which nationality was a factor, since Article 3 specifically provided that the claims settled and discharged under Article 1 did "not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, *which claims shall be subject to compensation by the Government of Yugoslavia* * * *" (R. 11; emphasis added). The claim of petitioner, an alien until 1952, has never been "determined to be valid" by a Commission adjudication and has therefore never been released under the Agreement.

Petitioner's reliance upon the letter of July 19, 1948 (R. 36–40) as a "corollary agreement" altering the main Agreement and effecting the immediate dis-

charge and release of a limited group of listed claims (Pet. 6–7 and fn. 11, Pet. 19) is misplaced.[12] The letter states that the listed claims were considered during the negotiations and that the United States Government understood that the obligations of the Yugoslav Government with respect to such claims had been "forever ful'y settled and discharged * * * by reason of" the Agreement (R. 36–37). But immediately thereafter is the following proviso (R. 37):

> * * * provided, however, that nothing herein is intended to mean or shall be construed as meaning that other claims in addition to those hereafter listed, are not similarly and forever fully settled and discharged * * * by reason of the aforesaid agreement, it being expressly understood that the following list is partial only * * *.

All claims, listed or unlisted, therefore remained on the same footing. The mere listing of a claim could not serve as an *unconditional* discharge of Yugoslavia's obligations to the claimant, contrary to the terms of the Agreement itself. Discharge still awaited the determination of the adjudicative body that the claim was valid. This is evidenced by the opening words of the letter reserving the complete "authority and discretion" of the adjudicative agency[13] (R 36; see also fn. 4, *supra*, pp. 8–9).

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[12] The only other claimant named in the "letter-release" which is seeking review of the disposition of its claim is American & European Agencies, Inc., which does not rest its claim in any way upon that document.

[13] The real purpose of the letter was apparently to furnish Yugoslavia with a list of major claimants who had elected to assert their claims through the United States Department of

3. Petitioner's own actions furnish another basis for rejecting her attempt to obtain review on the ground that the purported release of her claim gives rise to constitutional issues.

(*a*). This Court long ago ruled that one who "submit[s] his claims to the Department of State for that protection which his government might think proper to grant * * * [and] invoke[s] the aid of the United States in collecting his claims * * *" has no standing thereafter to contend that the United States had no power to release the foreign government from its obligations "except upon the condition of making him just compensation for his claims." *Meade* v. *United States*, 76 U. S. 691, 724.[14] See also Borchard, *Diplomatic Protection of Citizens Abroad* (1915), pp. 357–358, 366, 373.

(*b*). In submitting her claim to the Commission for determination and seeking satisfaction from the Fund, petitioner acquiesced in the conditions which attached to the creation of the Fund and the Com-

State. Armed with this letter, Yugoslavia could validly refuse to consider these same claims in similar settlements it was at that time negotiating with other countries. See Hearings before the House Committee on Foreign Affairs on H. R. 4406, 81st Cong., 1st Sess., pp. 65–70. The letter thus served, in effect, as the first of the communications under Article 9 (b) of the Agreement (R. 15) and Section 5 of the Act (R. 81) calling for the transmission of copies of claims filed "in the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of" the Agreement (R. 15).

[14] Petitioner concedes that she "requested the United States to espouse her claim and thereby consented to its compromise, as in *Meade* v. *United States* * * *." Pet. 16.

mission.[15] Cf. *Wall* v. *Parrot Silver & Copper Co.*, 244 U. S. 407, 411–412, and cases cited. These include the finality and non-reviewability provisions of both the Agreement and the Act (Article 8, R. 14; Section 4 (b) and (h), R. 78, 81). In addition, they include the express statutory denial of the liability which petitioner asserts (Section 7 (f), R. 84):

> Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.[16]

Having chosen to look to the Fund, petitioner "must claim solely by virtue of [her] interest in the Fund created by the statute and under its terms [she is] not entitled to complain * * *." *Z. & F. Assets Corp.* v.

[15] Paradoxically, petitioner is compelled to argue that her "general just compensation right has been transmuted, by her own actions, to a right against the Fund" (Pet. 16), since what she specifically seeks in this action is review of the denial of her claim against the Fund, and not the general vindication of her claimed right to compensation. If she did not make this argument, there would be no force to her contention that her asserted constitutional right to just compensation would be destroyed by failing to permit review of the Commission determination, since other remedies would presumably be available (see Pet. 16). But as we point out in the text, petitioner thus falls between two stools—her concession that she has limited her claim to one against the Fund constitutes acceptance of the finality of the Commission's decision.

[16] Although this section applies in terms only to the claims of a "national of the United States," it would seem to apply *a fortiori* to petitioner during the period of her alienage.

*Hull*, 311 U. S. 470, 489; *Dayton* v. *Gillilland*, *supra*, 242 F. 2d at 228.

4. Putting aside her constitutional arguments, petitioner asserts a right to judicial review based on the Act itself—despite the unequivocal statutory provisions precluding such review. She argues that the negotiators intended her claim to be compensable, that this intent was embodied in the Agreement, and that the denial of her claim therefore violated both the Agreement and the statutory provisions requiring that the Commission apply "the provisions of the applicable claims agreement" and "the applicable principles of international law, justice, and equity" (Section 4 (a), R. 77; see Pet. 3, 18–25). Petitioner concludes that the Commission thereby exceeded its jurisdiction, rendering its decision amenable to judicial review.[17]

This attempt to evade the bar of the statute by the familiar device of characterizing the issues she raises as "jurisdictional", and of a type which, in some manner independent of the Act, give her a right to review, is unavailing. Cf. *Butte, A. & P. Ry. Co.* v. *United States*, 290 U. S. 127, 141–142; see also Brief for the Respondents in Opposition in *de Vegvar*, O. T. 1955, No. 654. If the Commission erred in deciding any of the issues in petitioner's case, it did so not in excess, but in the proper exercise, of its jurisdiction "to adjudicate claims settled under this Agreement * * *" (Article 1 (c), R. 10) and "to receive,

[17] This is identical to the argument made by Mrs. de Vegvar in her petition for certiorari. See the Petition in No. 654, O. T. 1955.

examine, adjudicate, and render final decisions with respect to claims * * *" (Section 4 (a), R. 77). This jurisdiction included, of course, jurisdiction to interpret and apply the Agreement to the best of the Commission's ability and in the light of its expert knowledge.[18] Under Section 4 (h) of the Act, the Commission's interpretations of the Agreement—constituting determinations of "questions of law"— are "final and conclusive" and not subject to judicial review.[19]

5. As in the *de Vegvar* and *Dayton* cases, the courts below found it necessary to decide only the threshold issue of reviewability in this case. But as we noted in those cases, other obstacles to the petitioner's ultimate success are likewise present and call for affirmance of the decision below. See Briefs for the Respondents in Opposition in No. 654, O. T. 1955 (pp. 23–25) and No. 129, this Term (pp. 19–20).

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[18] Speaking of Section 4 (a), the Report of the Senate Committee on Foreign Relations states (S. Rept. 800, 81st. Cong., 1st Sess., p. 9):

"The Commission is directed to apply the terms of the applicable agreement. Such application may require, in given cases, interpretation and construction of the meaning and intent of language used."

[19] Petitioner cites *Z. & F. Assets Corp.* v. *Hull*, *supra*, pp. 20–21, as authority for her argument that the statute permits review. But in that case the Court declined to review, despite the absence of any express statutory provision precluding judicial review of Commission action.

## CONCLUSION

The decision of the court below is clearly correct and is not in conflict with any other decision. The questions decided are not now of general importance. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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